

MATTHEW GOLDBERG
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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)	
ELECTRICAL WORKERS, LOCAL 1245,)	OPINION AND AWARD
)	of the
Union,)	ARBITRATION BOARD
)	
and)	
)	
PACIFIC GAS AND ELECTRIC COMPANY,)	
)	
Employer.)	
_____)	
Re: Grievant Termination)	
_____)	

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"). Under its terms, **MATTHEW GOLDBERG** was selected to serve as neutral Chairperson; **F.E. DWYER** and **ANTHONY BROWN** were selected as Union Board Members; and **ROBIN WIX** and **KARI CHESTER** were chosen to serve as Company Board Members.

Hearings in this matter were conducted on June 8, 9, and 10, and on August 24 and 25, 2015 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 November 20, 2015.

APPEARANCES:

On behalf of the Union:

ALEX PACHECO, Staff Attorney, **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245**, 30 Orange Tree Circle, Vacaville, California 95678

On behalf of the Employer:

MICHAEL J. LEBOWICH, Esq. of **PROSKAUER ROSE LLP**, Eleven Times Square, New York, New York, 10036-8299

THE ISSUES

Was the grievant, Grievant, discharged for just cause? If not, what shall be the appropriate remedy?

RELEVANT CONTRACT SECTIONS

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 hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause.

TITLE 104. MEALS

104.1 INTENT

The provisions of this Title shall be interpreted and applied in practical manner which shall conform to the intention of the parties in negotiating with respect to meals; namely, that a comparable substitute shall be provided when employees are prevented from observing their usual and average meal practices or are prevented from eating a meal at approximately the usual time therefore.

104.10 MEALS – REIMBURSEMENT AND TIME TAKEN

(a) Company shall pay the cost of any meal which it is required to provide under this Title, and shall consider as hours worked the time necessarily taken to consume such meal, except, however that when a meal is taken at Company expense following dismissal from work the time allowance therefore shall be one-half hour. If an employee who is entitled to a meal under the provisions of this Title prior to work, during or upon dismissal from work does not accept such meal the employee shall nevertheless be entitled to such time allowance of one-half hour for each meal missed and meal reimbursement as provided in (b) below. The foregoing shall not apply to an employee’s regular lunch period.

TITLE 202. HOURS

202.4 HOURS – GENERAL RULE

In general, except as otherwise provided herein, the regular hours of work shall be from 8 a.m. to 12 o’clock noon and from 12:30 p.m. to 4:30 p.m., or from 8 a.m. to 12 o’clock noon and from 1 p.m. to 5 p.m.; provided, however, that the regular lunch period may be advanced or delayed one hour or less for any of the following reasons, namely, (a) when work which must necessarily be performed on facilities serving a customer of Company can most conveniently be performed during such customer’s lunch period; (b) when work must necessarily be performed by reason an interruption to utility service or other emergency having occurred; (c) when work must necessarily be performed to eliminate a hazard to life or property; (d) when the Company foreman or other supervisor and the employees involved mutually establish a different lunch period or agree to a temporary change in the regular lunch period; or (e) when prearranged or emergency overtime work starting after 6:00 a.m. and before 7:00 a.m. results in advancing the lunch period to provide for the meal to be eaten no more than five hours after work began. A change in lunch period for any of the foregoing reasons shall not be deemed to require payment of overtime except that if the regular lunch period is advanced or delayed for more than one hour for any of the reasons herein listed (a), (b), and (c), the employees involved shall be paid at the overtime rate for work performed in the regular lunch period, and may eat their lunch on Company time.

TITLE 208. OVERTIME

208.1 DEFINITION

Overtime is defined as (a) time worked in excess of 40 hours in a workweek, (b) time worked in excess of eight hours en a workday, (c) time worked on a non-workday, (d) time worked on a holiday as provided for in Title 103, and (e) time worked outside of regular hours on a workday. Company shall not be required to pay overtime compensation more than once for any single period of time worked. Overtime shall be cumulated each day and shall be compensated to the one-quarter hour.

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208.2 RATE AND DOUBLE TIME CONDITIONS

(a) In general, overtime compensation at the rate of one and one-half times the straight rate of pay shall be paid to employees for overtime as defined in Items (a), (b), (c) (d) and (e) of Section 208.1; except that

(b) the time worked in excess of 12 consecutive hours and continuing until the employee is dismissed from such work shall be paid at the rate of two times the employee's straight time rate of pay, or

(c) if, following the employee's dismissal from work or on an employee's non-work day or holiday which the employee is scheduled to have off, the employee is called out for work, the employee shall be paid at two times the employee's straight rate of pay for all work performed outside the employee's regular work hours or on a non-work day or holiday which the employee is scheduled to have off.

208.11 REST PERIODS

If an employee has worked for eight hours or more at the overtime rate during the 16 hour period immediately preceding the beginning of the employee's regular hours on a work day, such employees shall be entitled to a rest period of a consecutive hours on the completion of such overtime work.

(c) If the eight hour rest period in whole or in part overlaps the employee's regular work hours the employee received pay at the straight rate for the extent of the overlap, except that the time taken during certain overlap for any meal to which the employees and title on dismissal shall be paid at the overtime rate.

(f) An employee entitled to a rest period hereunder may nevertheless be required to work during regular hours on a work day without having had a rest period of eight consecutive hours, in which event the employee shall be paid at two times the straight rate of pay for all work performed until the employee has been relieved from duty for at least eight consecutive hours.

208.12 PREARRANGED OVERTIME

When, at the request of the supervisor in charge, an employee reports for prearranged work on workdays outside of his/her regular work hours, the employee shall be paid overtime compensation for actual work time and travel time in connection therewith, provided, however, that if such employees continue to work into or beyond the employee's regular work hours, such employees shall be paid overtime compensation only for travel time from the employees home ad for actual work time up to the employees regularly scheduled hours unless the provisions of Section 208.11 are applicable; (b) on nonwork days on holidays, the employee shall be paid overtime compensation for actual worktime and for travel time in connection there with. For purposes of this Section prearranged work is deemed to be for work for which advance notice has been given by the end of the employee's preceding work period on a workday. However, Company shall make a good-faith effort to notify the

employee at least 24 hours in advance of the need to perform prearranged overtime work on non-workdays or holidays.

208.14 MINIMUM PAY

The minimum time for which overtime compensation shall be paid under the provisions of section 208.12 shall be two hours, except that if an employee, who has been notified to report for prearranged work outside of his/her regular work hours on workdays, continues to work in two or beyond regular work hours the employee shall be paid overtime compensation only for actual work time up to regular work hours, and for travel time as provided in Section 208.12 hereof.

SUPPLEMENTS LABOR AGREEMENT INTERPRETATION

SUBJECT: COMPARABLE SUBSTITUTE FOR USUAL AND AVERAGE MEALS (Meals at Home)

Section 104.1 of the Physical Agreement and Section 16.1 of the Clerical Agreement state that provisions of the Meal Titles shall be interpreted and applied in a practical manner which shall conform to the intention of the parties in negotiating with respect to meals; namely, that a comparable substitute shall be provided when employees are prevented from observing their usual and average meal practices or are prevented from eating a meal at approximately the usual time therefore. . . .

FACTS

Grievant had been employed by the Company for 28 and a half years, having been initially hired by it on February 25, 1985. Starting out as a helper, he moved through various classifications until passing through an apprenticeship and becoming a journeyman lineman. After a stint in that capacity, he became a troubleman or "T-man" in field services (Restoration), where he worked for roughly 13 years before being terminated August 5, 2013. At the time of his termination, grievant had worked in the East Bay/Oakland service area for eight years, save for three months when he was assigned to the Concord service area. His shift time was on a rotating basis, days Sunday to Thursday and swing shift Tuesday to Saturday.¹

The stated basis for his termination was "multiple occasions of false" Field Automation Systems, or "FAS" entries, "use of personal time during overtime assignments"² and "specific dates and times where he [misled] the Company as to [his] activities and whereabouts." There was no active discipline on his record at the time. Nor had grievant

¹Each day is divided into three shifts: 7:00 p.m. to 3:00 a.m., 3:00 to 11:00, and 11:00 to 7:00.

²The termination notice also cites a failure to "report a period of four hours Family Sick time." The Employer subsequently abandoned this allegation.

ever previously been accused of any similar misconduct. His work performance record contains numerous positive comments. Grievant's supervisor, Steven Silva,³ has always had a good relationship with him, and considered him to be a hard worker. The Local Investigating Committee ("LIC") report noted that Silva believed grievant to be an "asset" to the work group and was always available.

T-men work alone, serving as first responders to electric outages and other electric power related emergencies throughout the Employer's service territory. In addition to response work, they handle customer service calls which might involve panel or voltage issues. Upon arrival to a particular job, t-men address any safety issues, and attempt to solve the problem. Should the issue not be capable of fixing immediately or require greater manpower, the job is deferred to a crew. Troublemakers are provided a pick-up truck that has a 40' boom with a bucket attached. The truck is taken home after their shift ends in order to respond to emergencies that occur during what might otherwise be off hours.

The dispatch and scheduling team assigns jobs to the t-men as they are received, usually from a customer call. Troublemakers are issued a laptop computer known as the GD-8000 which they travel with in their trucks. Work assignments or "tags" are sent electronically by dispatchers via the FAS to this computer,⁴ typically to the t-man nearest the problem or to a t-man in the division. After receiving the tag, the troublemaker signifies that work is begun on it by entering in the FAS that he is "en route" ("ENR" below) to the job. Once he has arrived, he enters "on site" ("ONS") into the FAS. When the job is complete, the t-man closes out the tag with a "COM" FAS entry. Troublemakers can also "acknowledge" a tag in the FAS if they are not ready yet to proceed ENR, as they often receive tags while they are still working on other calls.⁵ All of these entries are recorded on the "Daily Work Report," which lists the time of each entry, including dispatch time, the job code, and the FOID, or Field Order Identification Code.

The FAS software includes a GPS component that allows Dispatch to track the location of the on-duty troublemakers. The system pings a unit's location every ten minutes, or after every mile driven, whichever is sooner. Additionally, when ENR, ONS or COM is entered in the FAS, the GPS automatically updates to show the location where these events were recorded. Grievant typically closed his laptop when driving,

³Silva has been a Restoration Supervisor for the East Bay division for five years. The Richmond and Oakland service centers are within the area of his responsibility. He has been grievant's direct supervisor since 2012.

⁴A small number of jobs are assigned by phone, instead of through the FAS system. In those cases troublemakers are expected to record those jobs in the "comments" field of the FAS.

⁵According to Restoration Director Michael Swanson, however, once the t-man is ENR, he may not accept any other tags. Grievant denied that going ENR on a tag was the equivalent of going "unavailable," as he could still be issued tags while going ENR. He would not re-affirm his previous testimony that he would only do one tag at a time: "You get the tag; you get other tags" was his response. Yet it is plain from his Daily Work Reports that he would not start on one tag until after he had entered COM for a previous one.

and testified that this would sometimes caused the system to freeze, causing the GPS system to be suspended.⁶

For each job, troublemen fill out an OIS query or a CC&B query⁷ on the FAS containing information about that job. They also fill out a "Troubleman's Daily Report," which contain handwritten brief descriptions of what was done on the job. The Daily Report does not necessarily have the same information as the FAS.

Grievant never turned down overtime opportunities. When terminated, he had been averaging around 40 hours of overtime per week for three or four years, often volunteering for what is known as "pre-arranged overtime," or shifts which as the name implies, are arranged beforehand and not in response to emergencies, jobs which take longer than the normal shift time to complete, or created by an employee absence. He was the only person on the so-called "212" OT list, and had the highest amount of overtime in Restoration in that stretch of time. Prior to the events leading to his termination, grievant was never told by management that he was taking too many of these shifts. Grievant usually worked through his lunch break. On a typical shift, he responded to between ten and nineteen tags, and has done as many as 32.

As he described, grievant signed on the FAS system each morning as soon as he got to his truck, usually between 6:30 and 6:45 a.m. He lives on a hill, and typically did not park his truck in front of his home. It might take as much as a 20-minute walk to reach his truck. Once he logged in, if he had a tag, he would review it. If not, he would not close the computer and conduct the required pre-trip inspection of his truck. Grievant and fellow Troubleman Jon Bauer⁸ both testified that these inspections could take as long as 45 minutes, while Troubleman Kenard Levine said they took around ten.

Grievant stated that more often than not, he did not have a tag as soon as he logged in.⁹ After the inspection, if he still had not received a tag, he would drive to the Oakland Service Center yard and do paperwork or help another troubleman with

⁶Grievant was extremely evasive when asked about his familiarity with the GD 8000, a tool he used every day for four or five years. He claimed not to know if the laptop had a transponder, would be "speculating" if he identified the on-off switch (designated by the universal symbol), and did not know that a switch identified by one antenna radiating beams and another with the symbol with an "X" through it turned off the connection to the Company network. He also had "no idea" whether he ever used that switch.

⁷Grievant explained that these documents contained information about the job and had areas where he could input his remarks about a particular job

⁸Bauer has been a Troubleman in the Restoration Department for 22 years, having worked for the Employer for 30. Bauer and grievant are good friends. Bauer works in the San Francisco division, along with ten other troublemen in his department.

⁹On each of the days under scrutiny here save one grievant went ENR within minutes of signing on, signifying that he did in fact have an assigned tag to work on as soon as he began his work day or evening.

automated controls. He might also go to the yard or to the gas station first after going ENR with a tag.¹⁰

After receiving a tag, grievant would acknowledge it and enter an estimated time of arrival. He then called the reporting customer¹¹ to see if the problem could be solved without his actually going to the site. If driving, he would pull over for these conversations. Grievant denied ever sitting at home when he was supposed to be working.

Bauer typically signed on in the morning and entered ENR in the FAS, but did not actually leave his starting location for 45 minutes or more. He would use the time to stock his truck, perform a vehicle inspection, and take care of other miscellaneous tasks. According to Bauer, prior to these events, t-men never received any instructions about where they had to be when they were inputting FAS codes. When he entered ENR, ONS, and COM, he was often simply parked in a safe place, rather than literally doing as described. Following grievant's termination, t-men were specifically instructed to go ENR only when they were actually en route, and ONS when they were actually at the site.

Bauer noted that there was also a common practice known as "sitting on a tag." Since the Employer was tracking productive and unproductive time to assign t-man productivity ratios, it was common for them to keep a tag open after completing a job when taking breaks or driving from one place to another. Bauer further maintained that his supervisor, John Moura, encouraged the t-men he supervised to sit on tags to boost the productivity ratio of his department. Bauer also had his lunch and other breaks while maintaining an active FAS status. Dispatchers could see where he was at all times, and never complained that he was sitting on a tag or that he was not driving when his status was ENR.

Troubleman Alfred White, who works in the Diablo division, testified that, during the relevant time period prior to grievant's discharge, when he took meal breaks during his shift, he was usually in ONS status for the tag he had been working on prior to the meal. He would likewise occasionally stay ONS if he completed a job and there were no more tags in the system. Nonetheless, White customarily did not sit on tags. He would go ENR before conducting the pre-trip inspection if he received a tag at the very beginning of his day. He also went home often to use the bathroom or pick up food during his shift, not counting those trips as a meal break on his timecard.

Levine is a Troubleman in Oakland, having worked for the Employer for 42 years. When he signs on in the morning, he reviews the jobs on the screen. If he sees one

¹⁰Silva testified that if a troubleman does not have any tags, they are supposed to use the time to stock their truck, fuel it, and make sure the truck is clean. They should also submit their time cards "first thing in the morning."

¹¹ The LIC Report states that there was a "clear directive" to call ahead or go out to a customer, and if one did not, a comment to that effect should be included in the troubleman's notes.

calling for an immediate response, he enters ENR immediately, before inspecting his truck. When he finishes a job and there are no other tags on his screen, he will stay in ONS status for the previous tag until another job is dispatched. If there were other jobs on his screen, he would enter COM and proceed to the next job as expeditiously as possible.

With regard to "riding" or "sitting on" tags, grievant had the following exchange with Employer counsel:

Q (By Mr. Lebowich) Do you remember testifying about Jeff Reed? He was your supervisor at one point, correct?

A: (By grievant) Yes.

Q: And Mr. Reed, according to you, making comments words to the effect of it was appropriate to ride tags?

A: I don't recall the conversation there. What you got on testimony, I don't recall that.

Q: Okay. You don't recall -- so Mr. Reed never told you to ride the tag?

A: It's been -- he was my supervisor over three years ago. I have at this point you're asking me on something there that I don't -- I have to look at.

Q: Okay. Sitting here today, you don't remember any conversation where Mr. Reed told you to ride tags; isn't that right?

A: The conversations with Jeff Reed, Jeff Reed would drive with me every -- almost every night. Okay. And he was with me when I was working.

Q: So I'll take that as you don't recall -- Mr. Reed never told you to ride the tags; isn't that right?

A: The riding of tags, like I said, I can't -- I can't go back. I mean, it's been a while. So...

Q: And Mr. Silva -- similarly, you don't recall now sitting here today Mr. Silva ever telling you to ride tags; isn't that right?

A: I remember Steve.

Q: Okay. So Steve did do that?

A: Steve said make -- the riding of tags was, Steve, make sure you stay working on your computer. Now, that's what Jeff Reed had said at the same time, make sure your computer is always working.

Q: Make sure your computer is always working, that's what they told you. Neither one of them ever told you to actually ride a tag; isn't that right, sir?

A: Riding a tag, I can't tell you about Jeff Reed, but I can tell you Silva, the implication was make sure your tags are working.

Q.: Okay. I'm going to ask you a very, very specific question. Mr. Silva never told you to, quote, ride tags, unquote; isn't that true?

A: No, that's not true.

Q: Okay. When did Mr. Silva tell you that?

A: I have no idea.

Q: Where did Mr. Silva tell you that?

A: I can't recall that.

Q: Do you recall anybody else who was in the room when Mr. Silva allegedly told you that?

A: I can't recall that.

Following grievant's termination, Silva instructed the troublemen to no longer sit on tags. Levine was never given any instructions prior to this discharge about where he could or could not spend unproductive time. He sometimes went home during his shift to use to the bathroom, but not if he had multiple tags to take care of. When working on multiple tags, he entered COM immediately after finishing.

Like Bauer, grievant maintained that he never received either written or verbal instructions about where he had to be or what he had to be doing when he entered ENR or ONS in the FAS. He was told by more than one supervisor to try to maximize the amount of productive as opposed to unproductive time as reflected in FAS by not closing out a tag until he received the next one. He also had not been given any instructions about what to do during unproductive time when there were no tags.

The Employer issued a "5 Minute Meeting" training memo on June 21, 2013, in which troublemen were notified that handwritten timecards were not permitted, and they were only supposed to use the ENR, ONS and COM designations when they were actually en route, at the site, and had the job fully completed, respectively. Troublemen were to go "Unavailable" for each break and lunch period, as well as during the time spent for stocking or fueling their trucks. They were further instructed that if they had completed all their tags before the end of the shift, they were to call dispatch and request work. If there were no additional tags or work for their area, they were to return to the service center and prepare their trucks for assignments. Restoration Director Michael Swanson characterized the memo as a "reminder" as opposed to new policy, whereas Bauer testified that the memo contained "new protocols."¹²

Bauer noted that because t-men did not receive any instructions as to how to fill non-productive time prior to the issuance of the memo, it was common for troublemen who lived in their service areas to go home and wait for the next tag. After the memo, troublemen were instructed not to go home for more than fifteen minutes during their shifts.

¹²Bauer had the following email exchange with his supervisor John Moura, after grievant's termination:

Moura: Call me we need to talk why it takes you so long to get to your jobs. You have been en-route for over [an] hour?

Bauer: John you asked us to go en-route on a job as soon as you log on them [to] do paperwork, stock, fuel truck to have acct for this time. So we don't do this anymore? That's fine just let me know what you want to charge for misc time

Moura: Keep doing what you are doing just watch your [estimated time of arrivals.]

Bauer also testified that it was common for t-men to respond to multiple tags while the FAS system showed that they had only responded to one.¹³ If he is en route to a particular job, and sees another posted job that is nearby or has a higher priority,¹⁴ he might respond to the second job. In such cases he would not record the second job in FAS at that time, as this would require him to cancel the first job that he was theoretically ENR to. A tag might be "suspended" then subsequently reactivated as a means to avoid this procedure, but "it never worked. . . . It would close out the tag, it would disappear, and then it would be reissued." He therefore stopped using this procedure.

Grievant likewise testified that he received and handled multiple tags. Based on its location or urgency, he would decide which job to do first. Tags with the highest urgency could not be suspended in the FAS. They would disappear off the screen if that were attempted. The only way to close out a tag was to enter ONS and COM, even if it had been disposed of without physically responding to the site or doing any work. Certain tags could be handled by a phone call. It was also common to be assigned duplicate tags for jobs that were already completed. When he had jobs in certain parts of Oakland, grievant would drive to a safer place, such as his residence or Emeryville, to input the required information. His supervisor aware that he was inputting data near his residence.

Supervisors receive performance-based bonuses based on a "STIP score" that takes into account a variety of performance measures, such as safety. Each supervisor's team is also assigned a "productivity coefficient factor" ("PCF") that measures employee productivity as a ratio of productive and unproductive time of employees in the field. Silva did not know whether the PCF for his team is part of the algorithm that determines supervisor performance bonuses. Swanson affirmed that the PCF is not a factor in these bonuses.

Silva has been grievant's supervisor since the beginning of 2012. He denied that he has ever directed grievant or any other troubleman to sit on a tag, but rather instructed them to fill their days with productive work. Silva was aware that grievant was inputting data near his residence.

The Employer's Investigation

The basis for the discipline resulted from an investigation/audit of the department's time use. In 2013, Restoration Director Michael Swanson¹⁵ became concerned about the department's productivity and overtime usage. More than 40% of payroll expense was due to overtime. High overtime expenses and low productivity

¹³Not infrequently, Bauer might handle as many as eight or nine tags at once.

¹⁴Urgency is indicated on the tags by color-coding and numbering in the FAS. "9000" code jobs have the highest priority; 1200 and 1230 tags have a lower one. 9000 tags must be completed within two hours.

¹⁵Swanson has worked for the Employer for 30 years

were prevalent in many divisions, with the San Francisco, East Bay, and De Anza divisions standing out among them. Swanson spoke with two local restoration managers about the problem, which he described as “working so much but there wasn’t that much work.” He requested they submit timecards to him for the employees under their supervision who had the highest overtime usage.

Mike Wear, Restoration Manager for the San Francisco and East Bay divisions at the time, identified grievant as the employee with the highest amount of overtime. Some time in March of 2013, he and Swanson reviewed his timecards from the past 30 days. They noticed an anomaly: grievant was recording the end of his shift a half hour to an hour past his regular quitting time. There is an eight-hour rule in effect whereby an employee should have an eight hour break between their regular shift and a pre-arranged shift. Because grievant did not have that interval, he would be paid double time for the second shift, as opposed to the time and one-half he would otherwise be paid.

Swanson asked Analyst Debbie McShea to compare the timecards (also known as the daily work report, which is generated by the FAS system) to grievant’s GPS data. A number of other issues and concerns with grievant’s time cards were discovered. McShea was requested to align the time card entries with the GPS entries. Her report indicated to Swanson that there certain of grievant’s FAS entries that did not match the GPS coordinates. This prompted Swanson to initiate a corporate security investigation.

Senior Security Investigator Kevin Griswold was assigned to the investigation,¹⁶ despite his lack of any significant familiarity with troubleman job duties, or the technicalities of the FAS system. McShea provided him with a spreadsheet of grievant’s FAS reports and GPS locations for certain days between January 29 through March 5. 24 separate incidents, occurring on nine separate days, were identified as containing apparent discrepancies between the FAS report and the GPS data. The dates in question were January 29, February 17, 18, 22, 25, 26, 27 and 28,¹⁷ and March 5. Griswold did not review any OIS reports, CC&B reports, or personal work logs.

Griswold interviewed grievant May 1, in the presence of Shop Steward Michael Swain. Grievant was asked to explain each of the discrepancies. Copies of McShea’s printouts were provided, but OIS or CC&B and grievant’s daily work logs were not. Grievant claimed that he was unable to accurately explain what he had been doing on the days in question without that information in front of him. In the report which was prepared by Griswold for issuance by Senior Director of Corporate Security Michael Peterson, Peterson stated that the “a summary of the daily work reports indicate that of the 149.25 hours submitted for pay [on the dates in question], [grievant] was at home for a total of 48.75 hours.”

¹⁶Griswold is a 25-year veteran of the Oakland Police Department.

¹⁷Although the events of February 28 were presented to the LIC, they were not considered at the hearing, and thus will not be used as a basis for the discipline.

January 29

Grievant worked 17 hours on this day, from 0700 to 2330. 16.5 of these hours were a prearranged overtime shift and 30 minutes were on emergency overtime. He was assigned thirteen tags, and eight unique jobs. Grievant signed on to the FAS at 7:03 a.m. from or near his home on Charing Cross Road in Oakland. He entered ENR at 7:27 to a job at 8832 Thermal Street, 10.6 miles away. However, the GPS data shows that he did not leave Charing Cross until 8:07. He did not go to the job, but rather to the Employer's Oakland Service Center, near Alameda. Instead of traveling the shortest, fastest route, which would take 21 minutes utilizing freeways, he drove in the opposite direction, to the area where UC Berkeley is located. He then headed south, traveling on city streets until he eventually got back to the freeway. The route added three miles and took 44 minutes to make the trip.

Grievant entered ONS for the Thermal Street job at 10:36, and COM at 10:52. GPS data reveals that he was still at the yard at 10:36, and did not arrive at Thermal Street until 10:53, 3 hours and 25 minutes after he said he was first ENR to that location.

Grievant told Griswold that it was his standard practice to go to the yard to do paperwork, including preparing timecards and filling out switch logs. He also served as a secondary SCADA repairman. Griswold testified that grievant did not explain why he had entered ENR when he was not traveling to the job site. The Local Investigating Committee ("LIC") Joint Statement of Facts recites that grievant told the LIC he was "en route to tag walked to truck, laptop in house." He further claimed that there was a service wire coming out the back as if someone was trying to steal the metal from the truck.

Grievant testified that the laptop was not in fact in his house, that he typically locked it in his truck.¹⁸ At times, he might drive to where his truck is parked, but did not recall whether he did so or walked on this occasion. Grievant's home address is 6822 Charing Cross; the GPS locates the laptop at 6701-6849 Charing Cross.¹⁹ He asserted that he delayed leaving for an hour because of his inspection resulting from the possible theft and because he "had to secure" the truck.²⁰ He then did his pre-trip inspection, drove to Buckingham Street, where a neighbor told him the suspicious person had gone. From there he went to a Shell gas station on Bancroft to refuel his truck. He uses

¹⁸Grievant testified that the statement in the LIC report that he kept his laptop in his home was "false." Business Representative Anthony Brown, who was present during the Joint Investigating Committee sessions, testified that he has no memory of grievant stating that he had his laptop in his home on January 29, and his contemporaneous notes also do not reflect any such remark.

¹⁹On the days under examination, the overwhelming number of GPS entries when grievant's truck is at or near his residence list an address at 6838 Charing Cross Road.

²⁰Grievant did not make any type of report about the attempted theft.

that particular station because it is the only one in the area where he can get diesel, and the fuel mix from the diesel at the yard sometimes caused problems for his truck.²¹

After refueling, grievant claimed he drove to the yard and did paperwork, mostly organizing timecards for the other t-men,²² spending about an hour and 45 minutes at the yard. Despite his not actually arriving at Thermal Street until 10:53, he entered ONS at 10:26, while still at the yard. Grievant noted that because the tag was a non-urgent 1230 tag, did not have to be there at a particular time. He resolved the call by phone, on the way, inputting COM before he arrived. Grievant stopped by the site anyway.

At 11:08 that day, grievant entered ENR to a job on Margarita Avenue in Oakland. This 9000 or priority tag had been dispatched to him at 10:41. The GPS records he was on Highway 13 at the time, 4.4 miles from the destination. Despite the priority status, ten minutes later, he was back in the vicinity of his home, which is in the opposite direction on Highway 13 from Margarita Avenue. Grievant remained near his residence for approximately 40 minutes, from 11:24 to 12:04. There was a 12:04 p.m. ONS entry, although he did not actually arrive until 12:24. The best route from his previous location to the job site would take between 7 and 9 minutes. Grievant's actual route took 1 hour and 16 minutes. Grievant told Griswold that he had gone home for lunch. Nonetheless, he indicated on his timecard that he worked through his meal, thus otherwise being entitled to missed meal pay.²³

Grievant testified that he began driving towards Margarita Avenue, which he claimed was in the general area of his residence,²⁴ after indicating that he was en route, and called the customer on the way. The customer told him that they were not at home at the time and requested that he come later. He decided to go home, use the restroom, then go to the job. On the way out of his home, he picked up an apple and a protein

²¹Levine testified that the Oakland Service Center is frequently out of diesel fuel. He also has a particular gas station he likes to use.

²²When asked by Union counsel if he would review the timecards for other employees and submit them, grievant answered "Yes." He also affirmed that he could tell by those records if someone was intentionally extending their workday. However, on cross, when asked if he was "responsible" for reviewing people's time cards, grievant responded "No," he just simply grouped them together, printed them out and emailed or faxed them to his supervisor, and never reviewed them. Generally speaking, grievant was extremely evasive on cross-examination, rarely answering a question directly and often contradicting statements he had made on direct.

²³F.E. Dwyer, an Assistant Business Manager for the Union, frequently deals with issues related to the meals language in the Agreement in the course of his duties. Under Section 104.10 of the Agreement, employees are entitled to a half hour of pay at an overtime rate if they miss a meal during their overtime shift, as well as reimbursement for the reasonable cost of an "interim meal," known as a "bun on the run." They are also entitled to the missed meal pay if they do not take a meal break between four and five hours after the start of the shift. A meal must be comparable to what an employee would have at home. Employees are only eligible for missed meal payments when they are required to work through a meal; they cannot decide on their own to work through a meal. Dwyer stated that he was not aware of anyone being disciplined specifically for improperly putting in for missed meals.

²⁴Margarita Avenue is considerably closer to the Thermal Avenue address than it is to grievant's residence.

bar. He parked some distance away from his house, as was his custom. Grievant denied telling Griswold that he had gone home for lunch.

Grievant entered ENR at 1:04 for a job at Fairway Avenue, entering ONS at 1:16. The 9000 tag was dispatched to him at 12:14. GPS data shows that he was already at the location at 1:04, and that by 1:19, he had left and was on the MacArthur Freeway, 1.6 miles from the destination. He drove to 5839-5861 Christie Avenue in Emeryville, where there is a shopping center, and arrived at 1:48. At 2:08, he entered "complete" for the Fairway Avenue job, and left Emeryville at 2:28. Although grievant spent forty minutes in Emeryville, there was no tag corresponding to any job at or near that location.

Griswold testified that grievant told him that "he called the customer, he possibly cancelled the tag, could have been a garbage call, or he got rid of it." He did not recall whether grievant had been referring to the Fairway Avenue job or an Emeryville job. Grievant denied saying that the Fairway Avenue call had been a junk call.

Grievant stated that he replaced connections at the pole and the weatherhead for that job. When finished, he had he did not have another tag. He drove to a Union 76 gas station at Christie in Emeryville, where he completed entered "complete" for the Fairway Avenue job, and made further entries about what he had done to handle the job, which took three or four minutes. He drove to Emeryville because he did not want to stay in east Oakland for safety reasons.

At 02:17, while still in Emeryville, grievant input ENR to a job on 73rd Avenue, near the San Leandro border, 10.5 miles away. After leaving Emeryville at 02:28, instead of getting on the freeway, he drove northeast on Ashby Avenue, to 3000-3098 Benvenue Avenue. He stayed at that location from 2:51 to 3:22. While there, he entered ONS for the 73rd Avenue job at 2:51, and COM at 2:52. He never drove to that site. Grievant told Griswold that he called the customer and the tag had been cancelled. Grievant had no explanation why he drove to Berkeley and remained there for about half an hour. Nor did he explain the time gap between being en route and completing the job if the tag had in fact been canceled.

Grievant testified that the 73rd Avenue tag was associated with a larger outage on Holly Street from a downed wire that had generated several other tags. He called in and verified that the tag he had been assigned was a duplicate. He then closed out the tag, and added comments indicating that it had been related to the Holly Street outage, performing all of these actions while at the Emeryville gas station. Grievant maintained that he frequently went to that gas station to do paperwork, although it does not carry diesel.

At 5:27, grievant showed that he was ENR to a job at 57th Street in Oakland. At that time, he was actually near the intersection of Shattuck Avenue and Bancroft Way in Berkeley, 1.9 miles away. At 5:35, he was still on Bancroft, and at 5:45 he was at 2835

Benvenue Avenue. Grievant entered ONS at 57th Street at 6:58. The difference between the ENR and ONS entries made it look as if he had taken roughly an hour and a half to travel distance that should have taken only between seven and 14 minutes. Griswold testified that grievant told him that he went home in the interim and completed the tag there, there being no policy prohibiting him from being at his residence during his shift.

Grievant denied making these remarks. He testified that he did not in fact go home or near his home during the time period in question. The GPS shows, however, that between 5:00 p.m. and 7:00 p.m., he is traveling in and around Berkeley, and parks his truck for twenty minutes on Shattuck Avenue between 6:32 and 6:52 p.m. There are no tags in that area for him to work on. Grievant eventually acknowledged that he did go home and have dinner while on standby waiting on a switch log, at around 8:00. He put in for a second missed meal for the period from 4:30 to 8:30 p.m. The GPS shows him to be at or near his residence for an hour and seven minutes, between 7:22 and 8:29 p.m.

Grievant claimed that he went to the site of the 57th Street job, which was a wire down tag, at 5:52, before returning home, but forgot to enter ONS while he was there. He later entered ONS and COM at the same time. With respect to going back to Bancroft Way, he testified that "it looks like I had to get some fuel," although he had already gotten fuel at the same station that morning. When confronted with this anomaly on cross-examination, he conceded that the claim about getting fuel the second time was likely inaccurate.

At 10:42, grievant was at 7227 Halliday Avenue near the San Leandro border but entered ENR to a tag at 2535 75th Avenue, 0.6 miles away. He never actually went to the 75th Avenue site, but drove nearly fifteen miles back to Broadway in north Oakland near his residence, where he was stationary from 11:07 to 11:25. Both the ONS and COM entries for the 75th Avenue job were made during that interval, at 11:20 and 11:21, respectively. Grievant told Griswold that he had handled the job with a phone call. He did not explain why he had been ENR for so long.

Grievant testified that he actually drove to the site of the 75th Avenue job, arriving between 10:35 to 10:45, then drove home after resolving the tag. The time on Broadway was spent finishing his FAS entries for the job.

February 17

Grievant worked overtime for 17 hours and 30 minutes on February 17. He was assigned nine unique tags. He signed on from the area of his residence at 4:51 a.m. He went ENR to a tag at 2020 Durant Avenue at 5:01, entered ONS at 6:04 and COM at

6:05.²⁵ Grievant signed off the FAS at 7:59. However, the GPS shows his truck never moved from the 6338 Charing Cross Road during that entire period. Grievant explained to Griswold that he handled the job with a phone call, but did not say what time he made the call.

Grievant testified that he was called in for emergency overtime as the second troubleman at 4:30 that morning. He either walked or drove down to where his truck was parked, logged in at 4:52,²⁶ and was dispatched for the Durant Avenue tag at 4:58. He called the Division Operator and was told to stand by until 7:00 because another troubleman had already responded. He forgot to sign off at that time, and ultimately signed off at 7:59, but did not put in for any pay after 7:00, until he was called back in later in the day. Grievant claimed to be "standing by" per instructions, sitting in or inspecting his truck from 4:50 until 8:00. He denied that he was in his home during that period. He put in for a missed meal for that interval.

Grievant signed back on at 12:14. He entered ENR at 12:20 p.m. to a job on Harmon Street in Berkeley, about five miles away, and ONS at 12:39. The GPS reflects that he was still at home. At 12:49, his truck moves to a location on Ashby Avenue, near the Claremont Hotel and about five minutes from his residence. After that, he returns home, arriving at 1:10 p.m. Grievant enters COM for the Harmon Street tag at 1:19, while still at home. Grievant never actually went to the job site, telling Griswold that he called the customer and closed out the tag. He did not explain why he drove down to Ashby and back.

Grievant maintained that while he was on his way to the job, the tag was resolved by the Division Operator. He then drove home, where he entered ONS and COM to remove the tag from his system. Grievant denied contacting the customer about the tag. He was then on standby for the next four hours, claiming that he sat in his truck the entire time except when he went into his house to use the bathroom. Notably, grievant told the LIC that "no one ever instructed him the we could not stand by waiting for tags at home."

Grievant stated that he was ordered to stand by to receive a switch log after closing out the Harmon tag. He went ENR at 15:19 to capture his time standing by, ONS at 17:26, then suspended the switch log tag to attend to two Oakland tags dispatched to him at that time.

At 5:26, grievant entered ENR to a job at 17th Street in Oakland, near Lake Merritt, seven miles away from his home. At 5:36, he was still at his residence. The next GPS reading, at 5:51, puts him on the Nimitz Freeway past the 17th Street destination. He entered ONS at 5:52, although he was still driving away from that

²⁵The distance between the job site on Durant and the Charing Cross location is 3.6 miles, which should take about 12 minutes travel time.

²⁶Grievant was actually paid from 4:30 am forward.

location on the Nimitz. At 6:00, he stopped at 1176 98th Avenue, in east Oakland, around ten miles away from the 17th Street job, and recorded that the job was complete. Grievant never went to the 17th Street site. Grievant told Griswold that he closed out the tag with a phone call. On the timecard he submitted for the day, grievant put in for four total missed meal payments, listed at 7:00 a.m., 12:15 p.m., 4:15 p.m., and 8:15 p.m., although he was at his residence during each of those times save the last, when he was driving around Berkeley.

Grievant testified that he called ahead to reach the customer for the 17th Street job while he was on his way. He received information when the call was dispatched that the customer had a locked gate, and he would need to contact the customer to gain access. When he first called, there was no answer. He subsequently resolved the call after driving to the yard without having to show up at the site.

February 18

Grievant worked eight and a half hours on February 18, and was dispatched six unique tags. At 3:09 p.m., grievant, while at his residence, entered ENR to a job at 2275 Park Boulevard in Oakland, 6.1 miles away. The GPS data shows his laptop was at 6838 Charing Cross. ONS was entered at 4:09, and COM at 4:10 p.m.. ENR was entered at 4:46 for another job at 3240 Peralta Street, some 5.7 miles away, although he remained at his residence until 5:38. The GPS locates his lap top in the area of his residence during that entire time, a span of nearly 2.5 hours. Griswold did not ask grievant about the first of these jobs, and was told by grievant that the second was handled by a phone call.

Grievant testified that, prior to leaving his residence, he did his pre-trip inspection, cleaned his truck, and called the customer for the Park Boulevard job. The OIS query indicated that he should call first, and listed two numbers. Grievant called both numbers more than once but got no response. Without visiting the site, he ultimately cleared the tag by making the requisite ONS and COM entries. He got another tag for Bond Street prior to leaving, but that tag was also cancelled. He was then issued the Peralta Street tag, went to that job site and handled the issue. He claimed he was in his truck near his residence for around 50 minutes before leaving for Peralta Street.²⁷

At 5:58, grievant recorded that he was ENR to Anchor Drive in Emeryville. He was actually on Harlan Street in Oakland, 2.4 miles away. At 6:07, he was driving in the opposite direction from the Anchor Drive site. Grievant got to the area of his home at 6:14. ONS for the Anchor job was 6:26, and the job was COM at 6:27. Grievant stayed at his residence for the next four hours, from 6:14 to 10:09. He never went to Anchor Drive.

²⁷Grievant entered ENR for that job at 4:46 p.m., but did not actually start traveling there until an hour later.

Grievant initially testified that he called the customer while driving in that direction. He did not receive an answer. Since the property was a locked apartment building, he left and returned to his home, as there was nothing more he could do on that job. On cross examination, he acknowledged never driving in that direction. The LIC report recites that grievant stated before the Committee that he "left Peralta and went to Anchor Drive and no access no answer."

At 6:27, grievant entered ENR to 100th Avenue in Oakland, 10.9 miles away from his residence. ONS was at 7:20, COM at 7:22. Grievant did not drive to that job site either. At 9:39, he entered that he was en route to a job at 85th Avenue in Oakland, 9.4 miles away. He did not leave his residence until 10:09. ONS was recorded at 10:27 and COM at 10:30.

Grievant claimed he called an electrician responsible for working on the problem at 100th Avenue three times, and did not receive an answer. He then called a troubleman who had previously worked on the issue, who told him that a cross arm needed to be replaced. The LIC report, recounting grievant's testimony, states that "grievant was then on 100th Avenue, trying to call an electrician."²⁸ Grievant entered a remark indicating that he would follow up with the construction department about the repairs the following day, and then touch base with customer. He closed out the tag, and did not receive any more tags for a few hours. He then got a tag on 85th Avenue tag, went to the site, and determined that an electrician was needed to replace a breaker. That tag was closed. He maintained that he sat in his truck near his residence from 6:14 until he left for 85th Avenue at 10:09.

February 22

Grievant worked 18 hours and 30 minutes on February 22, and received nine unique tags. At 10:20 a.m., he recorded that he was en route to 2003 Myrtle in Oakland. He was actually at 2815 Harrison Street, 1.8 miles away. He entered ONS for the job at 11:14, and COM at 11:17. The GPS shows that he drove from Harrison Street back to his residence (6701-6849 Charing Cross per the GPS) where he arrived at 10:53. Grievant stayed at that location until 11:28, and never went to Myrtle Street. Grievant told Griswold that he cancelled the Myrtle Street tag on the phone and went home to have lunch.

At 11:18, he entered ENR to 701 26th Street in Oakland, around five miles from his home, and ONS at 12:26 p.m. The GPS shows that he left his residence at 11:28 and drove to Bancroft Way in Berkeley, where he had been on January 29. Following that, he drove back to Highway 24, then to 1552 Beach Street, near Emeryville, where he arrived at 12:26. He never went to 26th Street. Grievant told Griswold that he called

²⁸Brown recalled that grievant said he was working on the 100th Avenue tag, but did not say that he was physically at the location.

the customer at 26th Street, an apartment manager, who informed him that he had taken care of the problem. Grievant did not explain why he drove into Berkeley and then to Emeryville, or why it took as long as it did to resolve the issue.

The Myrtle tag was assigned at 9:33. Grievant said he was working on a Harrison Street job when the tag came in.²⁹ When finished, he went to the area where both the 26th Street and Myrtle jobs were, near Castro Street, at around 10:30. He handled the 26th Street call by phone, and then went to the site of the Myrtle Street job.³⁰ The customer did not provide any contact information and was not being billed for electrical service. In the remarks section grievant noted that a meter should be installed, and closed out the tag. He entered ENR, ONS and COM for the 26th Street job that he had completed before the Myrtle Street job. The FAS report shows, however, that COM for the latter was noted at 12:29, while COM for Myrtle was at 11:17. Grievant asserted that he drove back home to use the restroom, entering ONS and COM after going home, roughly an hour after he had been at the site. He testified that there was nowhere between Castro Street and his residence to use the bathroom.

Grievant entered ENR at 12:27 for a job at 475 Merritt Avenue, around four miles from Beach Street. At 12:41, he was at Powell Street in Emeryville, which is in the opposite direction from Merritt Avenue. He drove home there through Berkeley, arriving at 1:29. He remained at his residence until 3:00. Grievant enters ONS at Merritt Avenue at 1:29, and COM at 1:30, without ever having gone to that location at any point.

Grievant explained that he was at Beach Street because he had to verify wire sizing for the Division Operators and engineering department. The Merritt tag was dispatched at 12:04. After leaving Beach Street, he went to his usual Shell gas station on Bancroft in Berkeley. While driving, he called the customer, and was able to resolve the call over the phone without going to the site.

Grievant accepted a new tag on Chestnut Street, six miles away from his residence, entering ENR at 1:30. As noted, he did not leave his residence until 3:00, whereupon he drove towards the Oakland Service Center. Despite an ONS at 3:03³¹ and COM at 3:21 for the Chestnut Street job, there are no GPS entries indicating he was at that location. For about an hour between 1:30 and 3:00 p.m., the GPS does not

²⁹Grievant was actually at the yard at that time, and did not arrive at the Harrison Street site until some 45 minutes later.

³⁰The GPS never locates grievant at the Myrtle Street site. Rather, after leaving the Harrison Street job, he returns to the vicinity of his residence.

³¹The trip from his residence to Chestnut Street should ordinarily take about 11 minutes.

appear to pick up any pings.³² However, the GPS is at the same spot at both times. Grievant told Griswold that he had been en route to the call, but that the call had been assigned to someone else while he was on his way. Griswold stated that he did not explain why he completed it, or why it had taken so long.

Grievant testified that he resolved the Chestnut Street call at the site in person with the customer. He stated that he was not taken off the tag, and never suggested to Griswold that he had been. He believed that the GPS entries ostensibly showing him at his residence for a long period was likely due to a malfunction, further speculating that it was continuing to ping him at the last recorded location.

At 8:10, grievant reported ENR to 1853 Embarcadero in Oakland, 13.2 miles from his location on Sequoyah Road. At 8:26, he was at Embarcadero, and at 8:33 he had turned around and was on the 300 block of 6th Street. Thereafter, he returned to his residence, arriving at 8:49, despite claiming on the FAS that he was ONS at the Embarcadero job at 9:24, almost an hour after leaving the area. Grievant told Griswold that he had gone home for dinner because he did not like driving around Oakland due to safety concerns.

The information grievant received indicated that the Embarcadero job involved damaged wires. Grievant claimed that he tried to call the customer, but received no answer. He initially testified that he drove by the site and closed out the tag when he was unable to reach the customer, only to later admit that he did not go to the site. After driving towards it, he went back to his residence to pick up something to eat. ONS for the job was recorded when home and parking. He had not taken a meal break earlier in his shift. Grievant claimed that he worked past midnight on that date, but only compensated himself for the time up until midnight.

February 25

On February 25, grievant worked 12 hours, eight of which were on straight time. The remainder included 3 hours overtime with a half hour missed meal, working through lunch. He entered ENR at 7:22 a.m. to a job at 1353 International Boulevard in Oakland, and should have arrived there about 7:42. Grievant was actually at his residence, 6.7 miles away from the destination, not leaving until after 8:12. Rather than going to the job site, he drove north into Berkeley, to Bancroft Way, where he had also gone on January 29 and February 22. From Bancroft Way, he traveled to the Oakland Service Center, and arriving there at 8:49. Grievant stayed at the Service Center until 9:55. He entered ONS at the International Boulevard job at 9:22, and COM at 9:23. Grievant told Griswold that he was doing paperwork at the Service Center, but did not

³²The LIC Report cites testimony from witness Colin Campbell, who takes care of the GD8000 for the t-men. He stated that when the GPS is not working, a ticket is generated from a central location. While he has worked tickets for grievant's GD8000, none were related to his GPS. When Campbell ran a diagnostic on grievant's lap top, it showed a signal was being received. The Report further notes that grievant has never called a supervisor about his GPS icon on the machine not working.

provide any reason for his FAS entries he never actually went to the International Boulevard job.

The tag was dispatched to grievant 7:07, while he was inspecting his truck. It was a "1240" tag for damaged equipment. Grievant again claimed that he tried calling the customer several times, but was unable to make contact. He believed that the system was not producing the correct address. He went to Bancroft to get gas, then drove to the yard. There, he did paperwork and eventually closed out the tag because he was unable to reach the customer and did not have an address to go to.

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February 26

Grievant signed on at 6:44 a.m. ENR was entered for a job at 2505 Mavis Street in Oakland at 6:57 a.m. while he was at his residence, where he remained past 8:13, and possibly through 8:42.³³ He suspended the tag at 8:23. ENR to another job at 95th Avenue was entered at 8:24.

Grievant reported working 17.5 hours that day, 9.5 of which were on overtime. The GPS shows him to be at his residence from 6:11 p.m. until sign-off at 11:30 p.m., although there are a series of significant gaps in the GPS data in that time frame: a one-hour gap between 6:11 and 7:12; another one-hour gap between 7:14 and 8:16; a one-hour plus gap between 8:16 and 9:22; and a 2-hour gap between 9:24 and sign-off. There are a number of ENR, ONS and COM entries in the FAS during that period associated with five separate tags. The last of the tags was for a job at 51 Nace Street in Piedmont. During the times when ENR, ONS and COM were entered for this location, grievant was at his residence.

Grievant testified that he had to contact the service planning department before responding to the Mavis job. He did his usual inspection and work on his truck before doing so. There were two major accidents on 880 that morning, so instead of going to Mavis Street immediately he went to the yard to pick up a ladder needed for it. He took care of a job on 95th Avenue while waiting for the traffic to die down, and went to Mavis thereafter, arriving there at 10:09.

Grievant provided a convoluted explanation why he preferred taking 880 over the alternate route on Highway 13, which parenthetically would have enabled him to reach Mavis Street and then the yard more easily and in a more logical routing. Grievant maintained that he did not prefer this route because if an emergency arose in North

³³The GPS showed a 30 minute gap between 8:13 and 8:42.

Oakland he would not be able to use Highway 580 to cut across town, as trucks are not permitted on this route.

A news report from the internet that day additionally reveals that the first accident took place at 06:00 in the northbound lanes which was cleared at 06:30. Not only was the accident cleared before grievant signed on that morning. It occurred in the lanes opposite from those grievant purportedly would be traveling on. The second accident occurred in Fremont, more than 20 miles south of the yard, at 6:20 a.m. It backed up traffic "all the way into San Leandro," which was just south of the yard. This was cleared at 7 a.m., although the news report states that "traffic was expected to remain slow on 880 throughout the morning commute."

February 27

Grievant signed on at 6:38 and left home for the yard at 8:49. His FAS entries indicate ENR to a job on Magellan Street at 7:35, ONS at that job at 8:47 and COM at 8:49. Grievant was at home from 1:45 to around 2:45 on this day. Nevertheless, he claimed have been ONS at a job at Brush Street at 1:30 which was COM at 1:49. There is no corresponding GPS entry placing him on Brush Street. He then enters ENR to 900 Seminary Avenue at 1:49, and ONS at 2:45, while the job was only 9.6 miles from his home. COM was entered at 2:46. Although he informed Griswold that he was home for lunch, he claimed on his timecard that he worked through lunch. He also claimed a missed meal later in the evening.

Grievant testified that he attended an LIC meeting that morning, causing his tags to pile up before he began responding to them. The tag for Seminary Avenue involved installing a volt recorder. He was the only one who performed these installations. He responded to and handled a downed wire and Brush Street before installing the volt recorder at Seminary, after he had already arrived at Seminary. After the Brush Street job, he went home from the area of Jack London Square to eat and use the bathroom, then returned and completed the Seminary job. There were several outstanding tags in his queue at the time he returned home, all of which were relatively close to his residence.

Grievant asserted that he preferred to go home to use the bathroom because it is clean, and that Swanson and Silva had both told him that he was permitted to home for that purpose during a shift. However, Silva stated that he told the troublemen in meetings prior to this discharge that they are not permitted to go home during a shift except for lunch unless they were already in the vicinity.

March 5

On March 5, while at home, grievant entered ENR to a job at 61st and Lowell in Oakland, 4.8 miles away. At 8:22, he suspended the tag, not having left his residence in the interim. Grievant did not offer Griswold an explanation why he did not leave before the tag was suspended.

Grievant testified that he had several tags assigned to him before leaving in the morning, and he clicked ENR on the first one he saw. Following his pre-trip inspection, he prioritized the various tags he had been assigned. He stated that he left his residence thereafter and completed several different jobs. He suspended the Lowell job when he went en route to another job he had been assigned that was closer.

At 6:54 p.m., the FAS shows grievant ENR to Brann Street in Oakland. At 7:33, he recorded COM on that job and ENR to another job at Louise Street. The FAS notes that this job was COM at 8:23. At 8:25, he went ENR to 2993 Ashbrook Court. The Ashbrook job was COM at 9:30, at which time he was also ENR to Santa Rosa Avenue. The Santa Rosa Avenue job was COM at 9:58, and he was ENR to 3rd Street at 9:59. The 3rd Street job was COM at 10:29. The GPS data shows that he did not leave his residence throughout the entire time frame. Griswold testified that grievant told him that he was at home eating dinner, and that he did not offer an explanation as to why he had reported en route and completed for the various tags. Grievant put in for a missed meal payment for that evening.

Grievant testified that he had completed the Brann Street job prior to 6:54, and closed it out when he got back to the hill where he lived. He stated that he also went on site to the Louise Street job and found that the customer had their power back. He also responded to Ashbrook Court, where there were burned out fuses, and he referred the issue to an electrician. He showed up in person at the Santa Rosa job, and told the customer that he would need to contact an electrician to reinstall a service knob. Grievant maintained that the GPS data for his activities that evening is inaccurate.

Brown testified, on the basis of discussions with Field Analyst Colin Campbell, that flipping the switch in the middle of the laptop computers troubleshooters carry would cut off the unit from cellular communication with the Employer's databases, but would not deactivate the GPS function of the units. He stated that the only way to disable the GPS function would be to turn off the device entirely.

Expert Programmer Analyst Jim Baack, who works on the hardware and software of the FAS, testified that there is a switch above the keyboard on the laptops that shuts off the GPS capability. The user guide for the laptops also indicates that the switch turns off the GPS. The GPS data is accurate to within 100 feet. Baack was not aware of any instances where the GPS systems on the laptops reported inaccurate data.

The Termination Decision

Based on his review of the records and his interview with grievant, Griswold concluded that grievant falsified company records and misused company time. His findings were set forth in a memorandum which concluded that grievant "misused company time, made false entries in the Field Automation System (FAS), and misused his company vehicle for personal use." When Swanson received Griswold's report, he consulted Doug Veader in Labor Relations. They concurred that the conduct warranted termination a decision which was approved by senior management.

POSITION OF THE EMPLOYER

Grievant routinely falsified the extent to which he was engaged in productive work, thereby fraudulently obtaining numerous hours in overtime and other compensation. He was properly discharged after a thorough investigation revealed the extent of his misconduct. A comparison between his FAS entries and the GPS data shows that on numerous occasions, grievant was not where he purported to be or doing what he was claiming to do. Excessive non-productive time was spent on his "morning routine." Grievant took many hours during his shift at home, misrepresented when he was at the location of a job and/or when he had completed a task, took too long to get to jobs, went home in the middle of shifts just to go to the bathroom, and claimed missed meal premiums when he had the opportunity to, and often did, take a meal. He utterly failed in his testimony to justify these irregularities. His testimony revealed his lack of credibility.

There were too many occasions when grievant misrepresented where he was and what he was doing for it to be an honest mistake or coincidence. Grievant was engaged in systematic theft of Company time, for which the only appropriate recourse was termination.

Grievant described his standard morning routine was walk to his truck, parked 20 minutes walking from his home. Once there, he would sign on, enter ENR to a tag, then inspect his truck. While he claimed the inspection took 45 minutes or more, another Union witness said it only took ten minutes. Most mornings he would drive to the yard, sometimes stopping for fuel well out of the way in Berkeley. Only then would he begin working on his assigned tag. He routinely represented he was ENR when in fact he was doing other things, and not necessarily engaged in productive work.

On January 29, he spent over an hour at his house while claiming to be en route to his first tag. Notwithstanding the GPS data, grievant denied he was at his house, contending that he was in his truck 20 minutes away from his home. He took so long at that location because he was inspecting his truck and rewinding some aluminum wire that someone had allegedly attempted to steal off his truck, an event he reported to no one. He drove out of the way to a gas station, and proceeded to the yard. There, he said he processed time cards and stocked his truck, tasks which took an hour and 45 minutes. Roughly three and a half hours after he went ENR to his first job, he finally arrived at that location. That he may not have needed to arrive at a particular time does

not mean he was permitted to stay ENR without engaging in productive work to still get paid for that time.

Likewise, on February 25, he claimed to be en route to International Boulevard at 7:22 a.m., but not on site until 9:22, two hours later. In between, he said he was doing his morning routine, driving to Berkeley for gas, then to the yard to do paperwork.

Grievant also had a pattern of spending excessive time during the work day at or near his home. The GPS shows that he did while representing on the FAS that he was working tags. He was paid overtime in the small sample analyzed while at or near his home on at least nine occasions. He was near his home for over an hour on the morning of January 29. He went home from 7:22 p.m. until 8:30, during which time he was not working on any tag. At first denying it, he was forced to concede he had been home when shown the GPS data.

On February 17, he entered ENR to Durant Avenue at 5:01 a.m., and then ONS and COM just after 6:00 a.m. He never actually left the vicinity of his home. He claimed he was sitting in his truck nearby for over three hours. After completing the tag at 6:05 a.m., he sought to be paid and was paid through 7:00 a.m. His truck was located at or near his home for more than four hours, from 1:10 to 5:36 p.m. He asserted he was on "standby" and, incredibly, sitting in his truck waiting the entire time, except for a brief trip to the bathroom. His only FAS activity was a single tag to which he went ENR at 3:19, and ONS at 4:11, then suspended the tag at 5:26, all without leaving his the area of his house.

The next day, he went ENR to a tag at 3:09, and marked it COM at 4:10, but never left the vicinity of his home, where he stayed until 5:38, 52 minutes after going ENR to another tag. He confusingly claimed that he resolved the tag by phone, but also that he had resolved it previously. After leaving at 5:38, he was back home just over half an hour later, at 6:14, and remained there for nearly four hours. During that time he entered ENR and ONS at a job on 100th Avenue. He accepted another tag at 85th Avenue at 9:39, taking another 30 minutes at home before leaving. Grievant maintained he was sitting in his truck the entire time.

On February 26, grievant was at or near his home for almost an hour and a half while supposedly ENR to Mavis Street, before he suspended the tag. He asserted he did not leave his home in a reasonable amount of time due to traffic. In the process, he admitted he was just sitting in his truck while it appeared to the Company that he was handling the tag. Similarly, on March 5, he was at or near his home for over an hour while supposedly ENR to 61st Street before suspending the tag.

This behavior also demonstrates that he routinely misrepresented when he was on site and when jobs were finished. The record is replete with instances where he represented he was ONS at a particular job when he was nowhere near it. In addition, in many cases he never went to the site at all. Similarly, he misrepresented the times

when jobs were COM. On several occasions he reported a job COM more than an hour after it had actually been completed. In many, he was at his home, or at a gas station (or mall) a considerable distance away from any job site.

Grievant took excessive time ENR to tag locations, which included detours in the wrong direction relative to the destination. On January 29, he drove into Berkeley and then to the yard before finally visiting the tag location hours later. Later that day, he recorded ENR to 73rd Avenue when he actually drove north and east to Berkeley. He supplied no explanation why he drove in the opposite direction from the tag site. On February 22, he represented he was ENR to Merritt Avenue, southeast of his location, when he was driving north and east into Berkeley, eventually returning to his residence, at which time he indicated ONS at Merritt Avenue. The next day, he recorded being ENR to Embarcadero. Though heading in that direction initially, he turned around and drove home without ever reaching the site. Despite first claiming he went to the site, he later recanted.

Grievant routinely drove home, regardless of where he was at the time, to allegedly use the bathroom. There were numerous public restrooms along the way that he could have used. Such a trip on January 29 wasted over an hour of work time. On February 22, he drove more than half an hour from where he was to use the bathroom at home. Incredibly, he asserted there was nowhere he could go to the bathroom in between. This wasted approximately an hour. On February 27, he claims that he went home to use the restroom from the area of Jack London Square, despite the fact that he had tags piling up all morning. This was also a needless use of his time.

The record further establishes that grievant consistently abused his missed meal privileges. He requested and received missed meal payments when he was not required by the Employer to be working, and when he had every opportunity to take a meal and/or was not otherwise using his time productively. Although he was actually home for at least 30 minutes between 11:24 a.m. and 12:04 p.m., he asserted he worked through lunch on January 29. He claimed that he worked through lunch despite having taken at least an hour out of his day to go home and admittedly grab something to eat. Later in the day, he put in for another missed meal overtime payment for the period from 4:30 to 8:30, while conceding he was at home during this period.

On February 17, he put in for a missed meal for the morning, at 7:00 a.m., despite the fact that he was at or near his house for over three hours that morning. He put in for missed meals three more times that day while being at home and/or in his truck without a tag that he was working on. On February 27, he claimed two missed meals: a missed lunch when he was home around lunchtime to use the bathroom, and admitted that he ate lunch there. The second allegedly missed meal happened later in the evening when he was home at 5:44 and again at 6:54.

The GPS showed grievant at home for most, if not all, of the period between 6:54 and 10:29 p.m. on March 5. He nonetheless requested a missed meal overtime

payment that evening. Missed meal payments are for employees who miss a meal because they are working, not for employees like grievant who spend hours at home or walking to and from their home rather than working. Obviously, they are not intended to be paid to employees who are actually able to eat a meal during the relevant period, as grievant did.

The sum total of these events conclusively establishes that grievant engaged in flagrant theft of time from the Employer. None of the arguments raised by the Union rebut the legitimate reasons underlying the Employer's decision to terminate the grievant, reasons which were amplified by his entirely incredible testimony. There is no dispute over the accuracy of the GPS data. While the Union and grievant made vague assertions in that regard, there was only one instance where grievant maintained that he was somewhere other than what the GPS showed.

Grievant's argument that he was permitted, and even encouraged, to get paid for loafing was absurd and wholly unsupported by the evidence. He himself admitted that he was expected to be working productively while on duty. Silva denied grievant's contention that he was told obliquely to sit on tags. Union witness Levine stated that he and other troublemen were told just the opposite. Levine added that he recorded tags in the FAS as he finished each job, and that if he had a tag waiting, he would hit COM and immediately go en route to the next job. White agreed that he would not sit on previous tags. Due to his friendship with the grievant, Bauer's credibility is suspect. The "5 minute meeting" document was meant to emphasize the commonsense rules, not to set forth new ones.

Finally, grievant's lack of credibility was highlighted by his far-fetched testimony on many topics. He insisted that he never took his laptop into his home, and as such the GPS was registering the location of his truck, parked a 20-minute walk away. However, GPS readings were accurate to within 100 feet and repeatedly showed the unit at his home. He maintained that he routinely drove home to use the bathroom regardless of how far away he was, and nonetheless walked a considerable distance to his house. He essentially stated he would never use public restrooms. Despite being home, he frequently denied getting something to eat, putting in for a missed meal instead.

Grievant refused to admit the obvious, such as when he denied that ENR signified he was on his way to a tag location, and when he claimed that where he had two hours to respond to a tag, he had no idea whether that meant he could sit and do nothing for an hour before taking action. The number of instances that grievant testified to something incredible are simply too many to be coincidental or benign. He was dishonest as an employee, and dishonest at the hearing.

In these circumstances, grievant's prior disciplinary record is irrelevant. Theft of time of this magnitude is such a serious offense that it justified the Employer's decision to immediately terminate his employment. It is widely recognized that theft warrants

summary termination. The Employer has discharged employees for falsification of time records on several occasions. These terminations have been upheld by LIC's. The grievance should be denied in its entirety.

POSITION OF THE UNION

Grievant was a highly respected, longtime employee with no discipline at the time of his termination. He had an exceptional work ethic that earned him a reputation in the department of being the go-to person for overtime and after-hours jobs. Because the basis for the termination was alleged dishonesty, the Company must prove by clear and convincing evidence that grievant intentionally acted to defraud the Company.

To support its claim of record falsification, the Employer relied exclusively on one type of document, the FAS/GPS records, which were created and reviewed by individuals who had absolutely no experience working as or alongside troublemen. Despite the introduction of hundreds of documents that detail grievant's actions on each day and the corroborating testimony of three fellow troublemen, the Employer has maintained its unconditional reliance on the FAS/GPS records.

Grievant has not engaged in the conduct for which he was terminated. Troublemens have no control over the amount or nature of work they are assigned. Grievant had no ability to deliberately slow the work he was required to perform. Three other troublemen explained that they engaged in the exact same types of "misconduct" for which grievant was terminated, and were even pressured to do so by management. The Company was forced to acknowledge that it failed to issue a set of rules governing the type of conduct at issue until after it investigated grievant and initiated termination proceedings. A review of the different events shows that grievant has never engaged in any dilatory tactics. The Employer has fallen well short of providing the clear and convincing evidence to the contrary necessary to prove allegations of dishonesty.

Grievant was a standout employee, hard-working and reliable troubleman who consistently volunteered to work the most overtime in the department. Troublemens work highly regimented workdays where almost all tasks are delegated by dispatchers and division operators. They thus have no control over the amount or type of work they receive. Tags are dispatched and are not equally distributed, and they are not assigned based on how many active tags are in a troubleman's queue or whether he is responding to a tag. Thus, the amount of time it takes a troubleman to respond to a tag and resolve does absolutely nothing to impede, prevent, or delay the assignment of additional tags. Grievant had no control over the number of tags he would receive during a shift. Like a fireman he was at the mercy of the number of "fires" that occurred during his shift.

In contrast to the hands-on role of dispatch, there was little if any direct daily oversight or direction of troublemen by their first line supervisors, meaning that troublemen were largely left to develop their own practices on how best to complete

their work. The troublemen as a group developed a number common practices. The rigid means of logging their time in the FAS system does not capture the realities of their established daily routines. They often need to deviate from them. Before grievant was terminated, they were never directed to click ENR only if they were driving to a tag, or ONS only when they were actually at a location. In many instances, troublemen clicked ONS and COM without having done anything simply to clear the tags from their system. When working on multiple tags, they would often work on one job while being ENR or ONS at another, simply because the FAS system was not capable of capturing the nature of their activities. Additionally, some of the work required for a response, such as refueling, getting materials, or calling ahead, to a customer, cannot be captured as "productive." Likewise, switching tasks or standing by cannot be characterized as ENR or ONS. Closing out or clearing a tag also requires ENR, ONS and COM entries, even where the customer cannot be reached or the exact location cannot be found.

When receiving multiple tags, the troubleman will prioritize them and create a predetermined route to respond as efficiently as possible. Other factors, such as proximity, safety concerns, and weather and road conditions also have an impact on how the work is organized and performed. Troublemen cannot operate pursuant to a static, linear schedule, because the nature of the work they perform does not allow it. Flexibility is necessarily required, and extends to entering information in the FAS. Grievant's practice of entering information in the FAS was a common practice and does not constitute a falsification of records. It was simply the most practicable and logical way to respond.

In response to management pressure to increase their recorded "productive time," troublemen would frequently "sit on" tags to account for activities unrelated to the specific tag they were on according to the FAS. The troublemen themselves had no incentive, monetary or otherwise, to create the illusion of being productive when they had no active tags. The supervisors, by contrast, had incentive to have their employees sustaining high levels of FAS productive time to maintain their STIP scores.

Almost all of the troublemen who testified stated that management either explicitly or implicitly instructed them to increase their measured productive time by sitting on tags when they had no active tags to work on. This was why they would not use the "unavailable" feature in the FAS. All the work would be completed, but productivity would be increased. They also would click ENR at the beginning of their shifts prior to conducting pre-trip inspections and other paperwork in the morning, leading to long ENR periods at the beginnings of shifts.

It is inconceivable that management was not aware of these practices. Management never gave directions to the troublemen about how to spend their non-productive and standby time. Troublemen frequently face the situation where they do not have active tags to work on. During those slow times, the FAS entries would contain numerous indications of tag-riding, as clearly shown by comparing the dispatch and COM times on the time cards. The practice was evident from the fact that

troublemen never completed a single tag unless there was one other that had been dispatched, some of the dispatch and COM times would be exactly the same, since the troubleman would cease riding the tag when a new one appeared, and the ENR and ONS times are inexplicably stretched out. Supervisors who are responsible for reviewing and approving the cards could have made these determinations with ease.

Each morning, troublemen must inspect their vehicles and complete their time cards. To capture this productive time, they would enter ENR on an active tag that had been dispatched to them at the beginning of the shift. All four of the troublemen who testified admitted to doing this, and thus were riding their first tag while performing other work.

During non-productive and standby time, troublemen would try to stay busy as possible, but sometimes were required to sit in their vehicles and wait. They would perform housekeeping tasks such as stocking the truck, fueling and cleaning. Bauer, White and Levine admitted to riding tags while so occupied. Standby time means simply waiting for further instructions. The fact that grievant spent that time near his residence is unremarkable. No one directed him to do otherwise. Dispatch was constantly aware of his location.

So long as it did not impede the work getting done, there was no rule prohibiting troublemen from returning home to use the restroom or grab food. Each of the troublemen apart from White testified that they returned home during non-productive time. Most troublemen also would drive to a safe location in order to input data for a tag after completing it. Accepting the Company's assertion that it eventually implemented a rule prohibiting troublemen from going home during their shift unless they were in that vicinity, the evidence such as it is shows that the rule was not implemented until more than a month after grievant worked the particular shifts at issue. Management was aware of the practice long before imposing a rule prohibiting it.

The FAS and GPS systems, as well as the GD8000 computer, have a history of performance issues that make them an unreliable standalone source of the evidence in this case. The GPS often does not depict a specific coordinate, but rather a fluctuation or range of coordinates. Connectivity issues are common. While the GPS is not functioning, the computer will continue to store data that is being entered. Though the computer has a "kill" switch which can disable the GPS, the IT department can determine whether an employee has used it. There is no evidence that he did, and it was not a factor in the termination decision.

Whenever the GPS system is restored following a gap, it reports the last coordinates prior to the interruption. It is entirely possible that the data gaps were caused by a hardware malfunction, which might explain the increased frequency of such gaps through the last day investigated. As the FAS/GPS data are not very reliable, they must be viewed along with the rest of the records introduced during the LIC.

The investigation was conducted in bad faith and without reference to the appropriate documents that would have helped explain grievant's actions on each of the dates in question. Grievant came under scrutiny in the first place simply because Swanson was concerned about high overtime use, which resulted primarily from grievant's tireless work ethic. Once the investigation began on the flimsy pretense that grievant was working beyond the end of his shift, the inquiry was based entirely on FAS/GPS comparisons, despite the fact that one can tell from the face of the time card whether someone has inappropriately worked beyond the end of their shift.

The Employer made no effort to examine the daily reports, OIS queries, and CC&B queries, which provide indispensable information regarding the context of how troublemen spend their shifts. Worse, grievant did not have access to these documents when interviewed by Griswold. Neither Swanson nor Griswold had anything close to a nuanced understanding of the normal duties of troublemen, and did not make any good faith attempt to determine how grievant's actions compared to the normal practices of other troublemen. Further, troublemen were never notified that the conduct grievant was engaging in was prohibited until after he had been discharged. If the Company had done its due diligence, it would have been able to tell that grievant had not committed any violations of policy, but simply gone about his work like any other day.

A thorough review of the documentary evidence demonstrates that grievant did not engage in any of the types of misconduct alleged. All of the time represented in the various snapshots can only be accounted for, but shows no wrongdoing in any form. On January 29, grievant received only eight unique tags to work on during a whopping 17 hour and 30 minute triple shift. The Employer focuses on five different time periods when grievant had no active tags to work on. It was a slow day which was cherry-picked by the Employer to disingenuously bolster its position.

In the morning, grievant had to walk to his truck, and then spent time with his usual pre-trip inspection, and taking care of his truck after someone had attempted to steal wire from the back during the night. As was the common practice, he clicked ENR before doing these tasks. He then drove to his preferred gas station that had diesel, and proceeded to the yard, where he was required to help organize the division's timecards. He also made some phone calls for the Thermal Street tag, and ultimately drove to the location to ensure that it had been resolved.

At 10:53, after completing the previous tag, he clicked "en route" to the Margarita Avenue tag. For the next fifteen minutes, he worked over the phone to resolve the next two tags that had been dispatched to him, then called ahead to Margarita Avenue, and was told to come later in the day. At that point, he had no active tags to work on. As a result, he drove back to the area of his residence to use the restroom and grab some food on the run, and did not have a sustained, 30 minute meal. He was not taking an hour out of his productive day, as the Employer alleges.

Grievant was dispatched to a tag on Fairway Avenue tag at 12:14. He was at the location between 12:53 and 1:16. During this time, he also completed the Holly Street tag. Thus, after completing the Fairway Avenue job, he once more had no active tags to work on until 1:46. He thus "sat on" the Fairway Avenue tag until 14:08, pursuant to the standard practice. He entered the paperwork for the tag at a Union 76 gas station in Emeryville because he did not consider the area he was in to be safe. After completing the paperwork, he accepted the 73rd Avenue tag, but was not able to leave the gas station before completing his work. Grievant left Emeryville at 14:28 to respond to the 73rd Avenue tag. He determined that the 73rd Avenue tag was a duplicate of the Holly Street job, and he was once again left with no tags to work on, and therefore decided to sit on the tag until he was dispatched another. When he received this tag at 14:51 while in Berkeley, he confirmed that this was yet another duplicate related to the Holly Street and 73rd Avenue outages.

He received his next tag at 15:01, and remained on Benvenue Avenue in Berkeley for another ten minutes. There was a gap in the GPS for about 20 minutes which may have prevented him from receiving this tag for a job on MacCall Street at that time. Presumably he was calling the customer from there or catching up on his paper. He received his next dispatch at 15:25 to a job on 57th Street involving a downed phone line. He drove there between 17:27 and 17:52 and resolved the issue at the location. and grievant therefore had nothing productive to do for an extended period.

After resolving the 57th Street tag, grievant was once again left without any tags to work on until 19:44. An entry in his Daily Report indicates that he received other work at 7:00, which grievant stated was a stand-by direction for a switch log. He accordingly sat on the 57th Street tag until 6:58, when he drove home to stand by for a switch log, and have another quick bite of food. As he was on standby, this would not have met the CBA definition of a meal taken.

Grievant was dispatched to a complete outage at 10:14 on 75th Avenue. At that time, he was responding to a prior tag on McDonnell. He is in Berkeley at the time, and testifies that it looked like he had to get some fuel. As he is heading in the direction of McDonnell, he calls the customer and is able to resolve the issue over the phone. He continued on in the direction of 75th Avenue and is close by on 73rd Avenue at 10:41 when he is able to resolve the issue. The tag is closed out at 10:42, when for the fifth time that day he had no tags to work on. He therefore drove back towards his residence to finish up the records for previous tags. No more tags were dispatched to him and he signed off at 11:30.

On February 17, grievant received only nine unique tags in another 17 hour and 30 minute shift. It was another slow day cherry-picked by the Employer to make grievant look bad. He was called at 4:30 a.m. on a day off and told to stand by. He got up immediately, went to his truck and stood by, but was ultimately not sent anywhere for the tag, and closed it out at 6:05. He continued to stand by until 7:00 when he was told he was no longer needed. Grievant was entitled to a missed meal since he did not take

the one he had earned between 6:00 and 6:30. Despite it being a day off, he was called back to work, signing on at 12:14. Grievant was dispatched to a tag on Harmon Street at 12:14. The issue was resolved while grievant was driving in the direction of the tag. He thus drove back to the area of his residence where he closed out the tag at 13:19. He was instructed to stand by for a switch log, and had no more tags to work on until 17:19. It was not unusual to be on standby for such a four-hour period.

Before driving to this 17th Street tag, which was dispatched at 17:23, and was a priority 2 job, grievant called and was unable to reach the customer, who would allow him to gain access to the property. He drove towards the job, and attempted to make contact again, but was unsuccessful. Since there was a locked gate at the premises, he decided to respond to another tag on B Street, then go to the yard. He closed out the 17th Street tag at the yard, as there was nothing more he could do.

On February 18, grievant was only assigned six unique tags in a shift that lasted eight and a half hours. The Company cherry-picked this day as well to fit its false narrative. He performed his normal routine at the beginning of his shift, and called the customer for the Park Boulevard tag, whom he was unable to reach. He later recognized that he had previously dealt with the issue, and completed the tag at 16:10. Shortly thereafter, he received the Peralta Street tag, which was again in a locked building. He remained at his residence for some time, but was likely performing work activities such as communicating with dispatch, entering information for prior tags, cleaning his truck, or calling ahead to the Peralta Street customer. He then drove to Peralta Street and resolved the issue.

He was then dispatched to a job on Anchor Drive. When he called ahead, the customer did not pick up. Since he would not be able to access the premises and he that determined that he could not fix the issue, he drove back to the area of his residence. Grievant had no active tags to work on at that time, and did not receive any for more than an hour. He therefore sat on the Anchor Drive tag while he waited.

The 100th Avenue tag was dispatched at 6:27. Again, grievant called the customer, who did not answer. He also tried to call the electrician whose number was provided in the OIS query. He finally found out what needed to be done from another troubleman and closed out the tag, having resolved the issue over the phone. At that point, he had nothing to do but wait near his residence for another tag. This occurred at 9:38. It was not unusual for him to be parked for the next 30 minutes while he called the customer and took care of other housekeeping tasks. He drove to the area after calling the customer, determined there was nothing he could do to resolve the problem. It was late at that point, and he returned to the area of his residence to close out the tag, which he did at 23:20.

February 22 was another very slow day in which grievant worked more than 17 hours and was only dispatched nine unique tags. Grievant received a Myrtle tag at 9:33 while responding to a Harrison Street tag, which he completed at 10:19. After clicking

ENR he handled a 26th Street tag, because it was closer than the Myrtle tag, and the FAS system does not allow troublemen to show that they are working on more than one tag at once. Grievant left the FAS entries for a later point because multiple tags were stacking up and he needed to get through as many as possible.

Grievant arrived at 26th Street at 10:30 and determined that it could not be fixed without a city inspection and an electrician. After resolving the 26th Street tag, he went straight to Myrtle Avenue. Myrtle Avenue was less than a mile away, which is why it was not captured in the GPS records. Grievant could not find the customer. His field notes reflect that there was nothing he could do, so he drove back to the area of his residence and input the information for the previous two tags.

Grievant clicked ENR for the 26th Street tag at 11:18, at which point he was distracted by some switch log verification work and decided to ride the 26th Street tag. He appropriately credited himself with a missed meal during the time he was at his home because he was engaged in productive work discussing the verification work with dispatch. Between 11:38 and 11:49, he drove to his preferred gas station near the GPS address at 2400 Bancroft, and then went towards Beach Street for a wire sizing job. When he arrived there, he closed out the 26th Street tag. He also called ahead to the customer for a "9030" Merritt Avenue tag dispatched at 12:04. He was unable to make contact. The GPS shows that he drove to Berkeley in the area of his preferred gas station again. Without having anything to do, he returned to the area of his residence and closed out the Merritt Avenue tag.

After a Chestnut Street tag is dispatched at 12:45, he goes ENR at 13:30. There is a 90 minute gap in the GPS. Grievant was unable to recall exactly what he did during that time. He had two non-urgent jobs on his screen, both of which required making contact with the customer before driving to the job site. He was unable to make contact with the customer on Embarcadero. If he also could not make initial contact with the Chestnut customer, there was again no more work for him to do. He ultimately resolved the Chestnut job at the site. He drove by the Embarcadero site, but still could not make contact with the customer, and there was no further reason to stick around.

Grievant had no more active tags to work on by that point, and would not receive any more for the rest of his shift. He therefore drove back to the area of his residence to wait for more tags, and to grab something to eat from his home. He decided to close the Embarcadero tag at 21:25. Despite working 27 minutes past midnight, he only credited himself with working until midnight on his timecard for that day.

In another example of cherry picking, grievant received only eight unique tags during a 12 hour double shift on February 25. After signing on at 06:47, he did his normal early shift routine on February 25, and attempted to call ahead to his first job at International Boulevard, but the customer never picked up. After his normal duties at the truck, he drove to get gas at Bancroft, then drove towards the job. He continued calling the customer, who still did not respond. Grievant also was having issues

locating the address on his Garmin. He therefore proceeded past the site to the yard, where he arrived at 08:49. He rode the tag until 09:24, then closed it out when he received his next tag.

On February 26, grievant received 18 unique tags during a 17.5 hour triple shift. Although this is the first day cited by the Company where he got what he described as an "average" number of tags, the Company chose to focus on one time period during the shift, one which included a long data gap. Grievant signed on at 06:44 and clicked ENR at 06:57 for his first job on Mavis Street. He then performed his normal routine in order to capture productive time in the FAS. When he was ready to leave, he learned that there was an enormous traffic jam on 880 on the way to the yard and Mavis Street. He therefore decided to wait at home for the traffic to clear up before driving to the yard. While there, he picked up a ladder needed for the job. He then took care of another job on 95th Avenue, and drove to Mavis Street and completed that job.

On February 27, grievant worked on 15 unique tags within a 17.5 hour triple shift. The Company again focused on one period of time during which it made sense for grievant to go home. Upon signing on at 06:40, grievant received four tags. He had to attend an LIC meeting at the yard that morning, and was only able to complete one tag before that meeting. During the meeting, several more tags were assigned to him, bringing the total number in his queue to seven by the time he was done. He began to resolve as many tags as possible, without being precise about what he was doing with his FAS entries. The GPS data for that day therefore understandably has little connection with the FAS records. Because all of the time spent on the tags would be considered productive, it did not matter which one he was technically ENR or ONS for.

Once the meeting was over, he drove to a job on Washington Street, which he completed at 12:16. Within the next 15 minutes, grievant received 3 tags, two of which were priority code jobs. At this point, he had nine active tags in his queue. He chose to attend to a tag on Telegraph Avenue. The GPS placed him in that area between 12:27 and 12:41.

After resolving several tags, he drove to the location of the Seminary Avenue job, where the GPS placed him at 13:01. He completed the tag, then noticed the Brush Street tag in the same area. He dealt with that issue shortly thereafter, and decided to postpone entering the FAS information for the Seminary Avenue tag. After having dealt with many tags all morning, he needed to use the bathroom and get a quick bite to eat, so he drove back home. He still had six tags in his queue at that point, but they were all extremely close to his residence. Contrary to the Company's speculation, he worked through his meal time.

On March 5, grievant had 15 unique tags during a 17.5 hour triple shift. Many of these were for equipment inspections, which typically take less than an hour. The GPS data for March 5 is full of gaps and errors. Given this, it is nearly impossible to get an accurate accounting of how grievant spent his time.

After signing on at 7:07, he conducted his usual pre-trip inspection between then a 8:12. There were several large data gaps in the morning, during which time grievant was both near his residence and working at various job sites. There is another gap between 10:44 and 11:18, during which grievant completes a second tag on 32nd and Adeline. Grievant was near his residence at 11:19. A significant data gap follows, which makes during which it cannot be determined whether grievant was actually near his home at the time. Even if he was, he could simply have been grabbing a “bun on the run.”

In the evening, the GPS reported that grievant was at home for long stretches of time. From 18:54 to 22:29, there are five lengthy data gaps. However, due to the tendency of the GPS to report the last known coordinates after resuming normal functioning, many of the coordinates reflecting that grievant was at home do not establish that he was actually at home. His work records in fact show that he visited the sites of several different jobs during a long stretch when the GPS shows that he was at home. He recorded performing actions at several of the sites that he could only have done in person. It is therefore clear that grievant was working and responding to multiple tags, not sitting idle near his residence.

Grievant responded to a Brann inspection tag between 18:54 and 19:33, then went to a Louise Street tag which was dispatched with a 9030 priority 2 code at 16:14. There was no access to the property due to a high gate. Grievant resolved it by determining that it was a fuse issue which the customer would need to replace himself. This shows that he visited the location, as he could not have known the gate was locked unless he did so. The GPS entries showing him at home were clearly incorrect.

Grievant responded to a tag on Ashbrook Court between 20:25 and 21:30. Grievant stated that he showed up at the location and determined after burning out several fuses that an electrician was needed. This was work that had to be performed on site, which is not reflected on the GPS records.

Similarly, grievant responded to a tag between 21:30 and 21:59 on Santa Rosa Avenue. After showing up at the location, he concluded that the issue was for an electrician rather than the Company. Likewise, the condition he found at his next tag, which he responded to between 22:00 and 22:30, could not have been determined without being at the site.

After grievant was investigated, the Employer issued a Company-wide bulletin prohibiting the very practices that grievant was discharged for and for which his peers testified to also testified to doing. Silva admitted at the LIC that this was the first “official communication from the Company addressing these practices. Testimony of four troublemen shows that this was not merely a “reminder” of the rules.

As this case involves dishonesty, the Employer must prove it by clear and convincing evidence. It also must show that grievant knowingly made false entries on

his time card which were designed to obtain compensation for which he was not entitled. Grievant could not have committed any violations of Company policy with respect to how, when and where he spent and accounted for his time because none existed prior to the underlying events in this case. Except where knowledge of a rule can be easily inferred, there can be no violation of a rule without clear notice of its existence.

The specific rules at issue here, which concern the appropriate manner for making entries into the FAS and whether troublemen are allowed to go home during their shifts, do not specifically prohibit theft of Company time or resources. They concern a broad array of behaviors and practices, as they are meant not only to regulate accountable time or prevent tag riding. They affect management as well as unit employees. Accordingly, they do not fall within any exception to the notice requirement.

Even without the testimony of four troublemen and Silva's acknowledgment that the June 21 Five Minute Meeting was the first official notification of how they were supposed to account for their time, the timing of the bulletin, coming as it did after the investigation, undermines the Company's position by illustrating that it sought to correct ubiquitous behaviors due to a lack of management oversight and a lack of clear guidelines.

It is clear that the rules were introduced in direct response to the facts of this case. Of particular relevance are the rules which suggest that troublemen can go "unavailable" for a variety of activities, and that they must be ENR or ONS when actually so engaged, and that they must call dispatch to request work when all tags are completed. White and Bauer admitting to riding tags during time spent driving to meals as well as through their meals, while all four troublemen admitted to riding tags when fueling or stocking their trucks. Only Levine stated that he tried to have his FAS entries reflect what he was doing in real time, but even he admitted that there was often a need to deviate from this practice.

No instructions were given by Silva how to spend nonproductive time. Only after being recalled as a rebuttal witness did he say that troublemen were supposed to contact dispatch or other troublemen if they were left without work. This contradicts instructions in rule 11 which mandates that troublemen return top the yard and prepare their truck for assignments.

Each of the four troublemen acknowledged to being pressured by management to sustain high levels of productive time in the FAS. The Maura email which directs Bauer to continue to ride tags while doing paperwork, restocking and fueling provides the most egregious example. It should be no surprise that Bauer, White and Levine admitted to riding tags in some capacity.

Grievant was never notified of any rules regarding FAS entries. He cannot be held accountable for alleged violations simply because he was number one on the overtime list while other troublemen consistently engaged in the same type of behavior and were allowed to keep their jobs.

Prior to these events, the Company had no rules about whether troublemen could drive home to use the bathroom, grab food, fill nonproductive time, stand by, or for any other valid reason. The Company has failed to demonstrate that grievant was even aware that he was subject to any of the rules that he purportedly violated in this case, let alone that he committed any such alleged violations to gain compensation to which he was not entitled.

The Employer also failed to prove that grievant's work performance was inadequate, as it misunderstands a fundamental aspect of the case: he had no control whatsoever over the number of tags dispatched to him. His FAS entries made no difference to dispatch. If a job came in, they would assign it and it would pile up in his queue if he was working on other jobs. Thus, in order to prove its case, the Employer would either have to show that grievant was consistently failing to finish the tags given to him throughout a shift, thereby forcing dispatch to reassign them, or it would have to introduce data indicating that he was significantly slower than an average troublemen.) The Employer failed on both counts.

There is no context to show that grievant was lagging behind his peers in productivity. The Employer did not even attempt to make such a showing. A few examples from slow days, cherry picked after an extensive review of the records, simply do not establish that grievant was a slow or inefficient worker. Even if the Company can prove that it had rules in place that would have prohibited the conduct for which grievant was terminated, it still fails to demonstrate by clear and convincing evidence that grievant committed any violation, much less that he intentionally defrauded the Company of its time or resources.

Grievant appropriately compensated himself with missed meals, as he worked through each of the periods of time that coincided with meals breaks. A meal is defined as a period during which an employee has 30 uninterrupted minutes to eat. This means he is not engaged in any productive work, including standing by pursuant to instructions. Despite Company efforts to complicate this issue by wrapping drive times as well as time standing by within the definition of a missed meal, the Company cannot point to a single instance within its 24 snapshots where grievant actually sat down and took a 30 minute, uninterrupted meal.

To the extent that the Company contends that grievant credited himself with a missed meal during a shift where it would not be contractually allowed, this sort of thing happens all the time due to the confusing language governing how meals are earned. To the extent that grievant gave himself missed meals that were not earned per the Contract, the remedy would be to simply correct his time card and not discipline him.

Even if the Arbitrator were to believe that the Employer has proven all of its allegations, under Pre-Review Committee Decision Nos. 22101, 22171, and 22109, a Decision Making Leave ("DML") is the highest level of discipline that would be allowed. Decision 22101 is exactly on point. There, a troubleman was issued a DML for "misuse of Company time and making false entries into the [FAS] during work hours" based on 19 separate events totaling 14.5 hours. Unlike the instant situation where grievant provided credible evidence that he was engaged in work activities in all the examples provided, the employee in that case could not explain why he spent an inordinate amount of time at a friend's home or at various commercial establishments. The case was not taken to the arbitration and the parties agreed that a DML was appropriate. There is no basis for a higher level of discipline in this case.

In PRC Decision 22109, an employee was plainly insubordinate by going home during a shift after being directly told not to, which caused him to miss an emergency tag. He received a DML, but was also not terminated. Likewise, a Gas Service Representative in PRC Decision 22171 received a DML but was not terminated for being home during his shift and failing to request work from dispatch.

Like these other three workers, grievant was a longtime employee with a spotless disciplinary record. He had a stellar reputation as one of the most dependable troublemen in the Department. Even if it found that the charges have been proven, grievant would still have been subject to disparate treatment, and no discipline higher than a DML would be appropriate. The Union respectfully requests that the grievance be sustained, and grievant be reinstated and made whole.

DISCUSSION

Grievant's termination letter does not refer to any specific rule violation(s) as the reason(s) for the discharge. Nor does it cite dishonesty or theft of Company time. Rather, it states that the termination is based on "extremely serious misconduct . . . including multiple occasions of false FAS entries [and] use of personal time during overtime assignments." The notice further recites that "there were specific dates and times where you mislead [*sic*] the Company as to your activities and whereabouts." Ordinarily, a termination would rise and fall on the reasons alleged for it at the time it was imposed. However, notwithstanding the somewhat broad language in the termination letter, the Company views the evidence as clearly establishing that the grievant was "intentionally stealing time."

Trustworthiness is a vital element in any employee-employer relationship, but especially one in which, as here, employees act independently without close supervisory scrutiny and with considerable discretion as to when and where they may be at any given time of the day. As the misconduct alleged here carries implications of dishonesty, it is serious enough to warrant a severance of that relationship consistent with just cause principles. Because these types of offense may legitimately result in summary discharge and have a potentially negative impact on prospects for future

employability, it is the Employer's burden to show they were committed by clear and convincing evidence.

The Union challenges the discharge with a host of factual and legal arguments. It maintains that in order for the Company to establish that grievant intentionally falsified records it must prove that he made "knowingly false entries on his time card . . . designed to obtain compensation to which he was not entitled." It is or should be clear that grievant's false record keeping was willful and deliberate, *i.e.*, "knowing." The occasions on which he entered ENR, ONS or COM for particular tags when he was otherwise engaged are discussed in some detail below, as well as in the preceding sections of this Award. These entries were not simply acts of negligence or carelessness. Grievant was purposefully misrepresenting what he was doing and the times he was supposedly doing it.

Proof that grievant made these false entries in order to secure compensation to which he was not entitled is but one of a number of aspects of this misconduct. "Theft of time" has other possible ramifications. Though securing unwarranted compensation is plainly the motivation behind seeking credit for missed meals when there is no basis for doing so, it is only one out of several possible rationales for the misrepresentations overall. Behavior which the Employer characterizes as "loafing" is another, as is using time on the clock to attend to personal matters. Even though the Contract would more or less guarantee payment for the hours on shift, and in that sense, the compensation would be "warranted," devoting work time to non-work pursuits would be entirely unjustifiable.

By falsifying these records, grievant engaged in a subterfuge which would enable him to "cover his tracks," as it were, and devote time on the clock to activities not connected with work, or to simply take breaks in excess of those to which he would otherwise be entitled. It may also have been an attempt to self-justify continued overtime opportunities. The Company additionally suggests that grievant sought to expand his work day so as to reduce the time between successive shifts and qualify for premium pay on a subsequent shift. Finally, as discussed below, the record falsification may have been aimed at limiting the number of assignments that grievant would complete during a given shift. While the argument is made that grievant had no incentive to create the illusion of being productive when he had no active tags, the fact remains that he deliberately and consciously mis-stated his whereabouts and what he was doing on numerous occasions.

The Union asserts that there were no rules, practices or policies in place that mandated that troublemen were required to represent on the FAS that they were ENR to a particular tag only if they were actually en route to that tag, or that they were ONS for a particular job only if they were actually at the location of that job. As grievant did not receive adequate notice that his conduct in these particulars would subject him to discipline including termination, the Union insists that his discharge was not consistent with just cause principles.

Plainly, it was not until after these events unfolded that the Employer felt the need to directly address the importance of recording activities in the FAS at or near the times that they actually occurred. This does not necessarily demonstrate that there were no such rules in effect prior to the issuance of the June 21 "5 Minute Meeting" memo. The Union recognizes that there are certain common sense workplace prohibitions which may be inferred from societal norms that do not require the publication of a specific rule before their violation may supply cause for discipline. A prohibition against deliberate falsification of Company records is one such example, as is one against stealing time. If records could be falsified without consequence so that the whereabouts and activities of employees were concealed or unknowable, there would be no point in keeping those records in the first place. The Union's argument that t-men were not instructed how to handle time during their shifts when they actually had no work to do loses sight of the fact that at minimum, they were presumably expected to be truthful about it.

The Union argues that because t-men have no control over the amount or type of work they receive, the amount of time it takes them to respond to and resolve a tag does nothing to impede, prevent, or delay the dispatch of additional tags. While this may be true insofar as the total that were assigned to grievant, grievant would only handle a discrete number of tags per shift. When he received a tag, he would simply place it in the queue. He would not enter ENR for a tag, *i.e.*, begin one job, unless he had closed out the previous tag by entering COM for that assignment or by suspending it. If he ran out of time on that shift before finishing all the tags dispatched to him, he would not customarily be directed to keep working beyond the normal end of his shift to complete what remained in his queue. Consistent with common practice, these tags would simply and routinely be reassigned to another troubleman. Thus the pace with which he handled his dispatched tags and the time he purportedly devoted to them had a direct impact on the number he completed per shift. Grievant clearly had some control over his daily work load.

Nonetheless, requiring the Employer to prove that grievant's productivity was inadequate in order to sustain the discharge, as the Union suggests, mis-characterizes the thrust of the allegations upon which the discharge is based. It is the fact of record falsification rather than its impact on his overall production that provides the reasons for this termination. A number of the days when the misconduct occurred were days on which grievant was not dispatched many tags. His productivity on those days, or jobs handled per hours worked, would necessarily be low. Nor was it essential for the Employer to prove that by consistently failing to finish his assigned tags, dispatch was obliged to reassign them after he signed off, or that grievant completed comparably fewer tags than his fellow t-men. With regard to the former, the evidence, as stated, showed that such reassignments were regular and ordinary. As concerns the latter, the question was not so much the number of tags that grievant handled as the way in which he handled them and the time he claimed to work on them when he was in reality engaged in other things.

The Union points to testimony from other t-men which it maintains establishes a common practice among them to “ride” tags in order to incorporate non-tag related time within the time devoted to actually providing service to customers. There were further intimations that the practice was condoned if not encouraged by supervisors seeking to boost their productivity numbers. Notably, none of these employee witnesses asserted that they were idle during such times. Rather, they spoke more of performing non-customer related tasks such as fueling and restocking their trucks or doing certain paperwork, and capturing that time by incorporating it within a dispatch.

The Employer questioned Bauer’s credibility on this point because of his personal relationship with grievant, and because he admitted to entering incorrect information in the FAS routinely. Union witness Levine confirmed that he was never instructed by Silva to sit on a tag, while White acknowledged it would be uncommon for him to do so. Both Bauer and White worked in different areas under different supervisors than grievant. Grievant’s own statements about riding tags were vague, evasive and contradictory, leading to the conclusion that grievant was never actually told that sitting on a tag when idle was acceptable.

Grievant’s testimony in general was conspicuously marred by these characteristics, as well as by a measure of combativeness, especially when questioned by the Employer’s counsel. Grievant often denied plain demonstrable fact, such as being at the location where the GPS placed him. He regularly made statements which made no logical sense, as he did by claiming that he sat in his truck for three hours during a pre-dawn winter morning when it was parked directly in front of his house, that he needed to travel back to his house to use the restroom rather than any of the hundreds of facilities available to the public in the territory in which he worked, or when he asserted he did not know where the “on-off” switch was on his laptop. The sum total of these factors, coupled with the numerous inconsistencies in his description of events and his demeanor while testifying, raised serious if not fatal doubts about his overall credibility.

As a consequence, the composite picture derived from the blizzard of data and documentation presented in this case is that grievant purposefully mis-stated his whereabouts on numerous occasions so that he might expand his work hours and/or gain the enhanced benefits from overtime and missed meals and give the impression that he was working when in fact he was not. Much of his efforts to explain why he was not where the GPS said he was consisted of little more than rationalization and conjecture not based on hard evidence, as well as the unsupported assertion that the GPS was not working properly. In view of the lack of credence which can be attached to grievant’s testimony as a whole, wherever that testimony conflicts with the inferences drawn from the Employer’s documentary evidence, it cannot be accepted as accurate and detract from the strength of that proof. The Employer has therefore established by clear and convincing evidence that grievant has committed the offenses alleged.

Beginning with the first incident on January 29, grievant states that he took roughly twenty minutes or so to walk to his truck that morning. Grievant somewhat incredulously denied being aware that the GD-8000 contained a transponder which enabled the GPS system to pinpoint within one hundred feet the location of the laptop or the location of his truck, assuming that the laptop was in his truck. Grievant signed on that morning, as he did on each of the days in question, from a spot which the GPS shows was steps away from if not directly in front of his house. Accordingly, either his truck with the lap top in it was parked at or near his residence, or he took his laptop with him when he went home and signed on from there. It had to be one or the other. Nonetheless, grievant strenuously denied the latter possibility, even to the point of asserting that a statement in the LIC report that he said something to that affect was false, while at the same time steadfastly claiming that he typically parked some distance away from his house.

It may be inferred that the reason that grievant contended that he parked his truck some distance away from his house was to account for the part of the hour plus that he spent at his home each morning before driving to his first tag-related destination of the day or to the yard. If grievant signed on when he reached his vehicle, he would not be paid for the time he spent walking to his truck, which would be the equivalent of time spent commuting to work. That time could under no circumstances be used as a factor to justify why he spent an hour or more on the clock at his home doing his "morning routine" before assuming his tag-related or yard duties for the day.

Stated somewhat differently, grievant's assertion that he did not take the GD-8000 into his house but rather locked it in his truck which was parked a 20 minute walk away was squarely contradicted by the GPS data. Grievant would necessarily have to have taken the lap top home and signed in from there as well as remained in his home during the first hour of his shift if it took him 20 minutes to walk to his truck and he considered that time to be compensable and a normal part of his "morning routine." Conversely, if grievant locked the GD-8000 in his truck, the truck would have to be parked in front of his house when he signed on. As these assertions are mutually contradictory, only one can be considered truthful, while the other willfully false.

Grievant also claimed to spend a good part of an hour doing a pre-trip inspection of his vehicle before driving to his first destination. Bauer agreed that such an inspection could take as much as 45 minutes. Yet Bauer included in his routine "restocking," a task which presumably could only be accomplished at the yard where the equipment and materials were. Grievant had 28 years of experience. It simply does not make sense that the inspection should take that long when conducted by someone who has done it hundreds if not thousands of times, especially in light of the testimony of Levine, another t-man with extensive tenure, who said that it only took him 10 minutes to accomplish.

Nor is grievant's statement that he investigated a potential theft availing in this first day's scenario as providing a reason for the time spent at home as this work day

began. Even accepting it at face value, grievant took as much or more time at his residence on each of the other days under examination, when no suspected robbery took place.

Grievant cannot satisfactorily explain why he enters ENR for his first tag on January 29 when he has no intention of going to the job immediately thereafter. Instead, he deliberately travels in the opposite direction from the job, meanders around Berkeley near the University campus, then doubles back on city streets until he can take the freeway not to the job site, but to the yard. His excuse for going into Berkeley was to fuel his truck, yet there are presumably a number of fueling stations more or less on the way to, if not inside the yard. The inference is almost inescapable that grievant "preferred" this out-of-way Berkeley location because it provided him with a rationale for padding his work hours.

Once at the yard, grievant allegedly does "paperwork" until he misleadingly enters ONS for this first tag while still at the yard. Grievant finally decides to go to this site after all, entering COM immediately upon his arrival. He explains that the problem was easily resolved by a phone call to the customer. Testimony conclusively established that it was a common practice if not a requirement for t-men to call a customer in advance of arriving on site. In this instance, a problem which has taken less than a minute to fix is represented on grievant's time records as occupying nearly four hours of his work day. Once again, it may be inferred that grievant's reason for not resolving the tag soon after receiving it was to give the appearance that he was engaged in productive work for a good part of his shift when he was not.

When grievant actually does receive his next tag that day, instead of proceeding to that site directly, he decides to go home and remain there for about a half hour, despite claiming on the FAS that he was ENR to that job. Grievant asserted that he worked through lunch and thus was eligible for a "missed meal" penalty. The GPS shows that this is plainly untrue, as grievant went home and stayed there during the typical lunch period, and did not start traveling to his next job on Margarita until 12:04 at the earliest, when the lunch period was more or less over. He further maintained that he had called the customer on Margarita and was told that the individual would not be home then and he should come later. This would ostensibly free up enough time so that grievant would be able to take his lunch and not have to work through it.

The Union argues that when grievant drove home around mid-day on January 29, he was not taking an hour out of his productive day because he had no active tags. If that were the case, there was certainly no reason for claiming that he was working through his lunch break: he had no work to do. In point of fact, grievant was dispatched the Margarita Avenue tag at 10:41 and entered ENR for that tag at 11:08. In actuality, grievant was driving to his residence during that interval, arriving there around 11:24. During the forty minutes thereafter when his truck was at or near his home, he made no FAS entries. Knowing that he had a half hour for lunch, there would be also be no reason for him to park 20 minutes away from his house, especially as he claimed to be

going home to use the bathroom and grab a “bun on the run,” thus using the entire time to walk back and forth to his house.

Under applicable state law, there are no rules requiring employees to eat anything during their meal breaks. All that is required is that they have an uninterrupted 30 minutes during which they are not obliged to do any work or work-related tasks. If grievant chose to use his lunch break to walk, sleep, read a book, drive to a restaurant or his home to pick up food or run a personal errand, that would not mean that he had a “missed meal.” As Dwyer testified, it is not the employee who decides whether to work through a meal. It is the Company which directs him/her to do so.

In this situation, grievant was not directed to work through his lunch break. Nor was there any necessity for him to do so. His claim that he did on that date was not based on fact or contractual entitlement. It also conflicted with what he told Griswold, that he went home for lunch. Grievant was not inundated with assignments on January 29. Despite the Margarita tag having a priority coding, he did not address it with any particular sense of urgency. He received only 8 unique tags during a 17.5 hour triple shift that day, more or less eliminating any rationale for working through lunch. His request for a missed meal on that occasion was therefore a deliberate falsification of records to obtain compensation for which he was not otherwise entitled.

This was but one example out of a total of at least seven arising over the days cited by the Employer where clear and convincing evidence established that grievant claimed missed meals and overtime compensation for them when he clearly was not actively engaged in productive work and was shown by the GPS to have been at his residence. While the Union maintains that such compensation was appropriate, there was little if any substantiation other than grievant’s self-serving testimony and work report entries that he actually worked through his meal times. To the contrary, most of the tags he was assigned were not emergencies or issued under circumstances which required immediate and constant attention from beginning to end. His habit of making FAS entries which bore no relation to the times he was engaged in the tasks indicated demonstrates that there was no justification for him to do even these minor administrative duties during what would otherwise be his meal times. As noted, there is no requirement that a worker “sit down” and take a “30 minute uninterrupted meal.”

The Employer acknowledges that grievant may have been entitled to certain payments pursuant to Contract language regarding reimbursement for the cost of meals. However, it also points out that the Contract further provides for payment of wages at overtime rates for the ordinarily non-compensable half hour meal period in the event that one is required to work through that period. In most if not all of the instances described, grievant was not required to work through a meal period. The evidence therefore clearly shows that grievant intentionally falsified work records for the purposes of obtaining compensation which was not warranted.

At 13:04 on January 29, grievant claims to be ENR to a tag on Fairway Avenue, although he actually arrived there at 12:53. He leaves Fairway about 13:16, driving for nearly one-half hour to Christie Street in Emeryville because, he claimed, the area around Fairway was not safe. The yard is half the distance from Fairway that the Christie Street location is, and certainly as "safe" as that spot. Grievant's credibility is once again called into question as he did not appear to have a legitimate basis for going to Emeryville: it was out of his way and unconnected with any work location. As he had no active tags at the time, he could just as easily have gone to the yard to do the paperwork he claimed he was doing.

The Union asserts that grievant remained in Emeryville for a total of 40 minutes to complete the paperwork for the Fairway job, as well as the others he had worked on that morning. His FAS entries for three of those jobs were all made roughly three hours before he arrived in Emeryville. Once there, he entered COM for the Fairway job, which he had actually left about a half hour earlier, and ENR to a job on 73rd Avenue, which he never traveled to. The FAS entries and the abbreviated handwritten entries on his Daily Report for the six tags he handled that morning were the only possible work-related tasks he could have done in Emeryville at that point. The Union's argument that he needed not an inconsiderable amount of time to do his paperwork is inconsistent with its assessment that it was a very slow day when he had very little to do.

The GPS shows that grievant drove from Emeryville to a street in Berkeley where he remained parked for about a half-hour, until 15:22, for no apparent reason. There are no tags associated with that location. He then drove to the area of his residence where he remained for about an hour and twenty minutes, despite receiving a dispatch to a job on 57th Street at 15:25. There is a Charing Cross ping at 15:41, then a gap until 17:02, followed by a ping on Tunnel Road at 17:06. Despite the gap, it may be inferred that grievant was at home in this interval, as the Tunnel Road location is about a mile and a half from his residence, and the GPS time stamp for the Tunnel Road address is equal to the amount of time it would take to drive there from Charing Cross.

It is highly unlikely that he would have driven to a tag or work related site during that period and then returned home. While in Berkeley but before arriving at home, grievant enters ENR to a tag on MacCall Street at 15:12. The only FAS entry during that period was an ONS and COM for that tag made at 16:58. Had grievant worked on the MacCall tag between 15:41 and 17:02, there would be no reason for him not to make his FAS entries would accurately depict what would have been a legitimate use of his time.

Grievant went ENR to the 57th Street job at 17:27, entering ONS at 18:58. He claimed he forgot to enter ONS when actually at the location, a claim which in light of numerous other false ONS entries and his extensive experience is not accepted as accurate. Grievant testified that he resolved the issue while on site. Yet his truck is constantly moving for a half an hour before and a half an hour afterwards, although he did pass near 57th Street. From there he drives to downtown Berkeley notwithstanding

that there are no tags in that area, where he stays for nearly a half hour until 18:58. At that point he heads back to his home, remaining there for about an hour.

At the end of the evening, grievant leaves the site of his last tag and drives back in the direction of his residence. However, instead of going home directly, he gets off the freeway and parks for 18 minutes on Broadway in Oakland, more or less traveling in the direction of but not quite arriving at his residence.

Grievant did not have any satisfactory explanation for the time he spent in Emeryville on January 29. Nor did he provide any justification for driving to Berkeley and remaining there for thirty minutes during which he ostensibly was working on 73rd Avenue. Grievant again put in for a missed meal (dinner) on January 29, although his truck is not at any designated work site between 5:00 and 8:30 p.m. that evening, and is at his home between 19:22 and 20:29. Grievant could also not explain why his time entries for his last job of the day indicated that he spent nearly forty minutes traveling to and completing the job when he did not actually visit the site.

On February 17, grievant requested compensation for four missed meals, one at 07:00, one at 12:15, one at 16:15, and one at 20:15. While he insisted that there was no rule against working from home, he denied doing that on February 17 on two separate occasions. The first missed meal allegedly occurred in the morning, when he was at or near his house. He asserted he was sitting in or inspecting his truck for roughly 3 hours that morning. There was a conflict between what he told Griswold and his testimony, in that he told Griswold that he resolved the first tag that morning with a phone call, whereas he testified that he had been told to remain on stand-by because another troubleman had responded to the tag. If another troubleman had responded, there would be no reason for him to attempt to resolve anything. The OIS Query for the job indicated that the tag had been resolved by that other t-man at 03:30 and with the FAS entry that he closed the tag out at 6:05. Following that, grievant had no more active tags until he signed off at 07:59.

Grievant's claim that he sat in his truck at or near his home during the pre-dawn winter hours is highly dubious, as is his claim that he did it again later that day for four hours after 1:00 p.m. It is also questionable that during "a very slow day," he would not be able to take a half hour meal break at various points. No dispatches were issued to him from noon to around five, although grievant claimed he was on stand-by waiting for a switch log. Even at that, he suspended that tag at close to 5:30 pm. Only one of the remaining tags had a priority code, and he was able to close that out as well as two others out within a half hour. Accordingly, his claim to have been on stand by for most if not all of that period cannot be accepted as accurate. As with the morning meal period, grievant had ample opportunity to take a meal break in the early evening.

Grievant put in for a second missed meal at 12:15, which was one minute after he signed back on that day. His entitlement to that missed meal was not made altogether clear. Except for a 12 to 20 minute interval beginning at 12:48, grievant is at

home for the entire afternoon. He nonetheless entered ENR at 12:21, ONS at 12:40 and COM at 13:19 to a tag on Harmon Street tag which he never actually traveled to. Grievant claimed to be on stand by waiting for a switch log, but did not state the time he was directed to start the stand by. Nor was the dispatch time for the switch log shown on the Daily Work Report. He also told the LIC that he was standing by "waiting for tags" at this time, as opposed to waiting for a switch log. It cannot therefore be concluded that his meal break around noon occurred while he was required to be working and was thus unable to take it.

Eventually, that switch log tag was suspended at 17:28. Giving grievant the benefit of the doubt, he may have been entitled to claim a missed meal at 16:15 based on his stand-by status. However, if grievant was able to suspend the switch log tag, the question arises why he would not do so to take a meal break. From 18:20 until 23:01, grievant is driving around Emeryville and Oakland, with no active tags except for the switch log he suspended earlier. Grievant entered ENR to this tag at 18:20 and ONS at 18:22, which was suspended at 23:01 and again at 23:08. Grievant failed to explain what work he was doing while driving around, how this was in any way connected to the switch log, his only active tag at the time, or why he would put in for a missed meal at 20:15.

On February 18, grievant was at home for the first 2 and one-half hours of his shift. He worked on only one tag during that interval which he was able to handle with a telephone call. Grievant claimed to be sitting in his truck for 50 minutes before leaving for a job on Peralta Street. Based on the overall credibility resolution discussed above, this assertion is not accepted as accurate. He entered ENR to that job at 16:46 despite not leaving for it until shortly after 17:38. The GPS shows that he was at his residence at this time. Notwithstanding his representation in the FAS that it took him 52 minutes to arrive there, his travel time according to the GPS was only 14 minutes.

At 17:58, he entered ENR to a job on Anchor Drive when he was in fact driving back to his home, where he remained for about four hours. Grievant entered ONS and COM for that job soon after he got back to his residence. Although he told the LIC that he went to the Anchor Drive site and could not gain access to it, he admitted in his testimony that he never drove in that direction. The Union acknowledges that it is "unclear" what grievant is doing at his residence between 16:46 and 17:38, and offers several theories on the point. This speculation is insufficient to overcome the inference that he was not doing anything work-related during that time frame.

Grievant was back at his residence from 18:14 to 22:09, although he claimed to be ENR at 18:27 and ONS to a job on 100th Avenue at 19:20. The LIC report recites that he told the Committee he was on 100th Avenue that evening, when he never actually went there. For his final tag of the evening, grievant claimed to be ENR at 21:39, although he did not actually leave his residence for 30 minutes, asserting that he was in his truck, doing paperwork during that time. These assertions also strain credulity. With only six tags to work on for the entire shift, and the previous tag

completed more than two hours before, it is highly unlikely that he would have thirty minutes of paperwork to do, let alone be sitting in his truck to do it. On this date, grievant was at his home for six and one-half hours out of an eight and a half hour shift.

On February 22, grievant did not leave his residence after signing on at 6:37 until roughly 8:15. He entered ENR to a job on Villanova Drive at 8:47, but then proceeded to the yard. While at the yard the Villanova tag was suspended, and grievant entered ENR for a Harrison Street job that he drove to shortly thereafter. The ONS and COM entries for that job were made within one minute of one another. The Union asserts that following this, grievant drove to 26th Street, which was closer at the time, before going to a tag on Myrtle Street, then proceeded to handle that tag. Grievant entered ENR to the Myrtle Street job at 10:20. The GPS shows, however, that grievant actually drove back to his residence during that time, which he reached at about 10:53.

Grievant claimed that he returned home to use the restroom. As the Employer points out, grievant asserted that there was nowhere he could go to the bathroom between Castro Street in Oakland where he was at 10:40 and his home, which resulted in his taking an hour on overtime for a bathroom break. While at his home, he entered ONS at Myrtle at 11:14 and COM three minutes later. Grievant entered ENR to the 26th Street job at 11:28 while also at his home, and left 5 to ten minutes later to drive through Berkeley and Emeryville from about 11:40 to 1:30 with no apparent purpose, at least none related to any of his tags.

While in Emeryville, grievant enters ONS and COM for the 26th Street job at 12:26 despite having visited that site at 10:30, according to the GPS. The Union maintains that grievant left the FAS entries that day for a later time because tags were "stacking up" and he needed to get to them as quickly as possible. This claim is belied by the Daily Work Report, which shows dispatches coming in at the rate of roughly one per hour that morning. It also conflicts with the Union's contention that this was a slow work day.

The Union explains that grievant's trip to Berkeley at that time was "most likely" to fuel his truck. He travels from there to Beach Street in Oakland for a wire sizing job which he testified he received from dispatch at around 11:20 and rode the 26th tag until 12:27 to ostensibly incorporate this assignment. However, he thereafter returns to Berkeley in the area of his "preferred" gas station for some inexplicable reason. The Union, while acknowledging that it is unclear why he would do so, asserts that this does not imply any wrongdoing. Yet this is exactly why grievant needed to make the FAS entries at or near the time of the events they occurred so as to make them coincide with the GPS. Otherwise, as in this instance, no correlation can be drawn between the GPS entries and the work he is supposedly engaged in, leading to the inference that he is not engaged in anything which is specifically work related.

From Berkeley, grievant returns to the area around his home, arriving around 13:30, when he enters ENR to a job on Chestnut Street in Oakland. Notwithstanding a

90-minute gap in the GPS readings between 13:30 and 15:00, grievant's truck remains in the vicinity of his residence before that time as well as after it, and does not start moving towards the yard until 15:04. At the time, grievant also claims to be ONS at Chestnut Street, a job for which he entered COM in the FAS at 15:21 while he was on his way to the yard.

Later that shift, at 20:10, grievant enters ENR to a job on Embarcadero. He arrives in that area around 20:26, leaving shortly thereafter to return to his residence, which he arrives at around 21:00. Grievant is at home for the next two hours, but enters he is ONS at Embarcadero at 21:24, completing that job one minute later.

The Union asserts that a myriad of factors such as weather conditions, safety concerns, proximity of the work and the dispatch of additional tags played in designating the appropriate route to take to service them. However, these factors were not, as a general rule, determining the circuitous routes grievant took to get from one job to another. More often they not, grievant factored in a return to his home as a consideration in designing his route, as well as including within travel time far more minutes than it actually took to get from point A to point B.

Grievant did not return home simply to use the bathroom or pick up food, as he persistently maintained. Rather, he spent considerable time there. As noted in Griswold's investigative report, of the 149.25 hours he submitted for pay on the days in question, 48.75 hours, or roughly 1/3 of the time, was spent at home.

On February 25, although grievant signed on at 06:47, he did not leave the area of his residence until after 8:02. He entered ENR to a job on International at 7:22 but never actually went there. He claimed that he was unable to reach the customer despite calling ahead several times. Rather than going to that job site, grievant drove first to the area around the gas station he frequented in Berkeley, then proceeded to the yard where he remained for a little over an hour. While there, he entered ONS for the International job at 09:22, which was COM at 09:23.

Grievant maintained that he was having trouble locating the address on International. This contention strains credulity, as International Boulevard is a well-known thoroughfare in Oakland whose addresses are aligned with the cross-streets. In other words, 1853 International is between 18th and 19th Avenue, and easy to find, especially for someone like grievant who has extensive experience driving around Oakland and a presumed familiarity with its geography. It is also on the way to the yard along the route he took from Berkeley. Finally, the claim that he could not locate the address on his navigation system and could not therefore proceed to the job site conflicts with his assertion that he could not reach the customer by telephone, as there would have been no reason for him to find the address if he was not going to travel there without having first reached the customer.

Grievant's explanation for his conduct on February 26 provides another example of his lack of candor. He claimed that he stayed at home between signing on at 06:44 and leaving at some point after 08:13 because of an enormous traffic jam, notwithstanding his 06:57 ENR entry for a Mavis Street job. Yet there were alternate routes available to him, namely Highway 13, whereby he could have stopped at the Mavis Street location on his way to the yard. His proffered reason for not taking 13, that he would not have been able to respond to an emergency in north Oakland should one arise, made no logical sense, based as it was on a hypothetical, non-existent situation. No such emergencies took place on any of the days under examination. In the event that one did occur, grievant could just as easily have retraced his steps and gone back the way he came.

Grievant also exaggerated the possible effects of the two accidents that morning on his route to the yard. The first was cleared before grievant signed on to work, and happened in the traffic lanes opposite to those in which he would have been traveling. The second accident occurred a considerable distance south of his destination and was cleared before grievant should have started moving in the direction of his first job, although it might have caused some delays in his trip to the yard had he left first thing in the morning. The fact remains however that he spent an hour and a half or more at home that day without any logical or work-related justification.

Grievant suspended the Mavis Street tag while still at home and entered ENR for a job on 95th Avenue at 08:24. He did not go to that job until 09:37, after he had stopped at the yard. Grievant returned to his residence at 18:11. While there are a series of significant gaps after that point totaling more than five hours, the only address reported by the GPS is near grievant's residence. However, there are two tags that were worked on in the gap between 21:24 and 23:20. Given this extensive amount of time, the evidence is inconclusive as to whether he remained at home or left his residence to work on those tags in that period.

The Union argues that grievant had a fair number of tags to deal with on February 27, which is why his FAS entries do not necessarily match up with the GPS data. It states that grievant drove to a tag on Washington Street immediately after an LIC meeting that morning which he attended. He reports being ONS at 11:30, and the GPS shows that he is in that area at that time, although he is constantly moving rather than being on the site for the 46 minutes between his ONS and COM entries for the job. The Union further asserts that after finishing a Seminary Avenue tag, grievant first notices a priority tag on Brush Street, which was back in the area where he just came from. The GPS places him briefly on 5th Street, which is in the vicinity of Brush, where he enters COM for that job. From there, he drives back to his residence where he stays for roughly one hour.

The Union next claims that it made "perfect sense" for him to go home as the next four tags he worked on were located "extremely close" to his residence. While that may be true up to a point, there is no indication that grievant "worked through his meal

time.” It appears that he remained at or near his residence for about an hour, and did not perform any work during that period other than making entries for the Brush Street tag upon his arrival. At no time does he actually go to any of the sites of the next four tags he made the FAS entries for save the 339 49th Street tag, where the GPS located him at 16:19.

Grievant in fact claimed two missed meals on this date, one at mid-day and the other in the evening. The Daily Work Report indicates that grievant was not dispatched any priority tags that morning and thus could have taken a meal break at any time before the noon hour. Similarly, grievant had no priority tags dispatched to him between 12:19 and 20:00, and could have taken a meal break in the early evening. Grievant was in fact shown to be at home at 17:44 and again at 18:54. There is no evidence that grievant was directed by the Company to work through either of these meal breaks.

On March 5, the Union asserts that over the span of roughly 3 and one-half hours, grievant was not actually at his residence, as it appears from the GPS, but rather working on the various inspection tags to which he was assigned. While the GPS pings back the last known location after it has been out of operation for a period, the location does not change for several entries after operation has been resumed. For example, between 19:44 and 20:23, the GPS is not operating. The only FAS entry made during this interval was the acknowledgment of a tag at 19:53. When the GPS resumes, grievant is still at or near his residence. The same thing occurs after a gap between 20:35 and 21:26.

At 11:19, grievant is back at his residence. Although there is a roughly one and a half hour gap thereafter, the next GPS entry at 12:48 shows him within minutes of his residence. Grievant enters ENR to a job on Lowell Street at 11:19 and ONS at that site one hour later, considerably in excess of the time it would take him to travel from his home to that destination, which should only be between 10 and 15 minutes. There were no FAS entries in that interval. While the Union maintains that grievant could have been grabbing a “bun on the run” at his house, inferences drawn from the evidence point to the conclusion grievant was still at his residence during that time and not engaged in anything work related, as shown by the lack of entries in the FAS.

The Union maintains that on this date, grievant was responding to a tag on Brann Street between 18:54 and 19:33. However, grievant entered ENR to that job at 18:31 while he was driving back to his residence. ONS and COM for that job were recorded at 19:31 and 19:33, when grievant was still at his residence. It takes roughly 15 minutes to travel between his residence and the location of that tag. It thus appears unlikely that grievant went to this site. The Union maintains that he then went to a Louise Street priority 2 job code tag. Parenthetically, he did not approach this tag, which was dispatched at 16:14, without any particular sense of urgency. The evidence established that such tags warrant a response within 2 hours. Yet grievant did not attend to it until three plus hours later. Nor did he advance it in the queue ahead of any lower priority inspection jobs.

Grievant claims to have been on site for this tag. The Union points to notations that he must have been there as these indicate that there was a high gate around the property. Yet the GPS does not at any time place him at that location. It was the customer who reported that there was a gate. The Union maintains that the GPS, which places him at home at the time he entered ONS and COM for this job, could not be correct, as he had to have gone to the site to know that the gate was locked. The evidence is wholly unclear on that point.

The Union contends that despite the GPS readings, grievant would have had to have been on site for the next tag on Ashbrook Court to learn that an electrician was needed to repair the problem. As with the previous tag, most of the information grievant obtained was provided by the customer and available on the OIS Query. Additionally, while there is a GPS gap of nearly one hour during the time that grievant claimed to have been working on the tag, it was suspended while he was still at his residence. He nonetheless thereafter entered ENR, ONS and COM at the same time while the GPS still has him at home. Once again, it is by no means clear that grievant performed the work that he represented he performed at the time he indicated he performed it.

Likewise, the next tag involved an issue that was the same as had been reported two months earlier. Grievant claimed to have been ONS during one of the several GPS gaps that evening. Grievant could well have determined that it was not a PG&E issue simply from the information supplied by the customer. As with the previous tag, there was insufficient proof that grievant had actually traveled to the site rather than remained at home during this interval.

Grievant again requested a missed meal overtime payment for the evening when inferences drawn from the GPS showed that he was home for most of the time between 18:54 and 20:30. Griswold's notes indicate that grievant told him that he had dinner at some point during this period of time. Based on this evidence, it is determined that he intentionally misrepresented his entitlement to the missed meal payment on that date.

In summary, grievant intentionally entered false information in the FAS in order to claim missed meal overtime payments that he was not entitled to and deliberately misrepresent where he was and what he was doing and the times that he was doing it. Grievant was unable to credibly or adequately explain his activities on numerous occasions when he claimed to be working. The fact that grievant spent a significant amount of his overtime hours at his residence or in areas wholly unconnected to his work assignments provides clear and convincing evidence that a considerable amount of his work time was devoted to nonwork-related or personal pursuits.

Citing three Pre-Review Committee Decisions, the Union contends nevertheless that even if grievant is found to have engaged in this sort of misconduct, a Decision Making Leave, or DML, is the highest level of discipline which is appropriate under the circumstances. The Employer counters with two recent Committee decisions where discharges for record falsification were upheld. Several additional Committee decisions


upholding discharges for this reason were also submitted in evidence. As such, it cannot be concluded that grievant's termination resulted from disparate treatment.

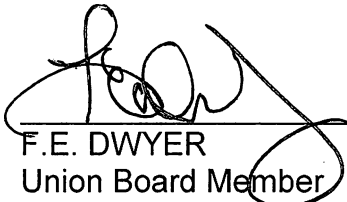
In addition, employers have broad discretion to decide what level of discipline is appropriate once misconduct has been shown. Arbitrators are reluctant to second-guess those decisions and modify that discipline unless it can be shown that the employer's discretion was exercised in a way which was arbitrary, discriminatory, or otherwise unreasonable. Given this record as a whole, as well as the prior Committee decisions upholding terminations on grounds similar to those presented here, there is an insufficient basis for reaching that conclusion. The Arbitrator thus lacks the authority to grant the relief which the Union seeks.


AWARD

The grievance is denied. Grievant Grievant was discharged for just cause.

Dated: January 25, 2016

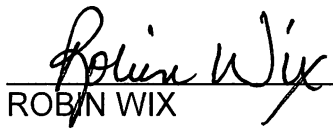

MATTHEW GOLDBERG
Neutral Chairperson

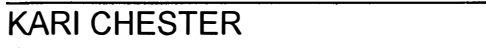

F.E. DWYER
Union Board Member
Concur Dissent


ANTHONY BROWN
Union Board Member
Concur Dissent

Dated: 2/4/16

Dated: 2/2/16


ROBIN WIX
Company Board Member
Concur Dissent


KARI CHESTER
Company Board Member
Concur Dissent

Dated:

Dated: