International Brotherhood of Electrical Workers Local 1245 and Pacific Gas & Electric Company Review Case #175	Arbitration Case #10 Issue: As applied to the facts of this case and within the meaning of Sections 104.1, 104.4, 104.10 and 104.12 of the Agreement dated September 1, 1952, as amended, was the Company required to provide a meal for Leland Massie when, on August 26, 1958, he worked four hours beyond his regular quitting time?
San Joaquin Grievance #137	Date of Opinion: May 5, 1960

Facts of the Case: On August 26, 1958, Leland Massie, a shift employee at the Kern Power Plant, whose regular shift is from 8:00 AM to 4:00 PM, was advised that he would have to work an additional four hours. He asked the Shift Foreman if the Company was going to furnish him with a meal and when the Company refused, the Union Shop Steward obtained a meal from Ray's Steak House at a cost of $1.94. The Company would only reimburse him $1.50 for the meal, contending that this discharged their obligation in full with respect to the meal in question.

The issue in this case is whether the Company is required to provide a meal for shift employees in such situations.

Prior to August, 1958, the practice with respect to meals for shift employees working four hours' overtime varied. About half the employees kept food in their lockers, and provided their own meals with the help of hot plates furnished by the Company, for which they were reimbursed $1.50 per meal. The others customarily waited until their shift was finished, and then dropped in to Ray's Steak House, which was about three and one-half miles from the plant, for a hot meal. Here they merely signed the check, and the Company reimbursed the restaurant directly.

This situation came to an end on August 6, 1958, when the superintendent of the Kern Plant posted the following notice on the Plant bulletin board:

> "In order to clear up misunderstanding relative to shift workers on overtime, your attention is directed to Titles 104.1 and 104.3 of the Contract. They specifically state the employee is to furnish his own meal and is to be paid one dollar fifty cents ($1.50) for each meal and that he shall not be allowed additional time there at Company's expense. Hot plates and a refrigerator are provided and each shift man has his own locker. Please conform to the provisions of these Titles."

It was against the background of this notice, which presumably barred further visits to Ray's Steak House at Company expense, that the demand which gave rise to the present grievance was raised.

The Union contends that it was eminently practicable for the Company to supply a meal under the circumstances at issue in this case: that this could have been done by having catering services in the area bring in food, or by sending someone in the plant to obtain it. Quite clearly, it would have been practicable for the Company to provide this man with a meal. As a matter of fact, he provided a meal for himself and since he provided a meal for himself by sending someone to the restaurant, it seems to us pretty unreasonable for the Company to say that it was impracticable within the meaning of 104.12 for them to have provided it.

The Company maintains that what is at issue is: "(1) whether the Company must go into the restaurant business, or (2) whether the Company may continue to follow the long standing custom and practice of reimbursing shift employees for meals obtained from their lockers." It argues that the overwhelming custom and practice throughout the PG&E system, not only at the Kern Plant, is for the shift employees to feed themselves from their lockers and accept reimbursement of $1.50.

Opinion

The interpretation of Section 104.12 has given rise to controversy for more than a decade, and this grievance was pursued by the Union as a test case in order to secure a general rule for the future guidance of the parties. It should be noted at the outset, however, that the submission agreement limits determination of the issue "as applied to the facts of this case". It would be beyond the competence of the Board of Arbitration to attempt to lay down a general rule in the face of so clear a mandate from the parties. Moreover, such a determination would involve the ascertainment of facts far beyond what was attempted in this case. It would be necessary, for example, to examine the location of all Company plants, their proximity to catering services, the cost of food delivery at different times of the day or night, and the manner in which the contract clause has been interpreted generally.

Limiting ourselves to the Kern Power Plant, it appears that over the years, local management and employees had worked out a reasonable system of provisions. Those employees who wanted to do so kept food in their lockers and heated it on Company-supplied hot plates. Occasionally, if there was enough notice, employees who were coming in on their regular shifts were called and asked to bring sandwiches or other food. And in some cases, the employees preferred to wait until their four hour extra shifts were over and stop in at a local restaurant for a meal at Company expense.

This modus vivendi was terminated by the Company notice of August 6, 1958, which sought to limit employees to reimbursement of $1.50 for food which they provided themselves. The question before us is whether this was an appropriate exercise of the Company's discretionary power pursuant to the provisions of Section 104.12.

Under the specific circumstances of this case, we do not believe that it was. The Company sought to show by testimony that there are very few circumstances, if any, in which it is "practicable" to furnish meals on the job to shift employees, either because of expense or limiting physical conditions. In its view, Section 104.12 should be read as though the first half were deleted, with shift employees virtually limited to reimbursement for meals which they provided themselves.

We cannot agree with this interpretation. The meal system in operation at Kern was obviously practicable, as evidenced by the fact that it was in effect for a number of years. Provision of a meal on the job came to include, by custom and usage, the employee's privilege of stopping for a reasonably priced meal at a local restaurant at the conclusion of the shift.

On the other hand, we do not regard as a reasonable interpretation of the contract the Union's insistence that a meal should have been brought in to Mr. Massie. We are impressed with the absence of large scale commercial catering in the Kern area; with the irregularity of the service which would be required; with the general unavailability of personnel to go out and bring food in; and with the cost that might be involved. We doubt that either party intended that the Union Shop Steward, or any other employee, should be converted into a regular food messenger. Mr. Massie was entitled only to continue his previous practice of stopping at a local restaurant, with which the Company had made suitable arrangements, to eat his meal at the conclusion of the overtime shift.

The Union is not claiming reimbursement for the costs incidental to procuring the meal, but only for the meal itself, just as though Mr. Massie had actually eaten it at the restaurant. Under the circumstances, he is entitled to reimbursement for the full cost of the meal.

Award

1. The Company was under a contractual obligation to provide a meal for Leland Massie when, on August 26, 1958, he worked four hours beyond his regular quitting time.

2. This obligation could have been discharged by permitting Mr. Massie to take his meal, in the customary manner, at a local restaurant after finishing his shift.

3. Section 104.12 did not require the Company to bring a meal for Mr. Massie into the plant during his extra shift.

4. Under the peculiar circumstances of this case, Mr. Massie is entitled to reimbursement for the full cost of the meal delivered to him on August 26, 1958.

/s/ Walter Galenson
Walter Galenson, Chairman

For the Company:

/s/ Vern Thompson

/s/ N. E. Rhodes

For the Union:

/s/ Mark Cook - Dissent

/s/ Jack E. Wilson - Dissent

In Re: Pacific Gas and Electric Company and Local No. 1245, International Brotherhood of Electrical Workers

Board of Arbitration: Walter Galenson, Chairman; Vern Thompson and N. E. Rhodes (company-appointed members); Mark Cook and Jack E. Wilson (union-appointed members)

Issue to be Arbitrated

As applied to the facts of this case and within the meaning of Sections 104.1, 104.4, 104.10 and 104.12 of the Agreement dated September 1, 1952, as amended, was the Company required to provide a meal for Leland Massie when, on August 26, 1958, he worked four hours beyond his regular quitting time?

Facts of the Case

On August 26, 1958, Leland Massie, a shift employee at the Kern Power Plant, whose regular shift is from 8:00 a.m. to 4:00 p.m., was advised that he would have to work an additional emergency four hour shift. He discussed with the shift foreman the question of the Company furnishing him a meal and when the Company declined to do so, requested Mr. Peterson, the Union Shop steward, to secure one for him. Mr. Peterson obtained a meal from Ray's Steak House, a restaurant in the vicinity, at a cost of $1.94. The Company reimbursed Mr. Massie $1.50, and contends that this discharges its obligation in full with respect to the meal in question.

Prior to August, 1958, the practice with respect to meals for shift employees working four hours overtime varied. According to Fred A.Miller, superintendent of the Kern plant, about half the employees kept food in their lockers, and provided their own meals with the help of hot plates furnished by the Company, for which they were reimbursed $1.50 per meal. The others customarily waited until their shift was finished, and then dropped in to Ray's Steak House, which was about three and a half miles from the plant, for a hot meal. Here they merely signed the check, and the Company reimbursed the restaurant directly. The cost of the meals varied between $1.50 and $2.00 (Transcript, pp. 77-79). Mr. Massie testified that he invariably followed the latter practice (Transcript, p. 42).

This situation came to an end on August 6, 1958, when the superintendent of the Kern plant posted the following notice on the plant bulletin board:

> "In order to clear up misunderstanding relative to shift workers on overtime, your attention is directed to Titles 104.1 and 104.3 of the Contract. They specifically state the employee is to furnish his own meal and is to be paid one dollar fifty cents ($1.50)

> for each meal and that he shall not be allowed additional time there at Company's expense. Hot plates and a refrigerator are provided and each shift man has his own locker. Please conform to the provisions of these Titles."

It was against the background of this notice, which presumably barred further visits to Ray's Steak House at Company expense, that the demand which gave rise to the present grievance was raised.

Positions of the Parties

Section 104.4 of the Agreement provides, inter alia, that when an employee is required to work 1 1/2 hours beyond regular work hours, the Company shall provide him with a meal. Section 104.12 specifies that this shall apply to shift employees (of whom Nassie was one), "except that where it is not practicable for Company to provide meals on the job for such employees as herein provided, they shall provide their own meals and Company shall reimburse them for the cost thereof not to exceed one dollar and fifty cents ($1.50) for each meal."

The Union contends that it was eminently practicable for the Company to supply a meal under the circumstances at issue in this case: that this could have been done by having catering services in the area bring in food, or by sending someone in the plant to obtain it. To quote the Union attorney: "Quite clearly, it would have been practicable for the Company to provide this man with a meal. As a matter of fact, he provided a meal for himself and since he provided a meal for himself by sending someone to the restaurant, it seems to us pretty unreasonable for the Company to say that it was impracticable within the meaning of 104.12 for them to have provided it." (Transcript, p. 6).

The Company maintains that what is at issue is: "(1) whether the Company must go into the restaurant business, or (2) whether the Company may continue to follow the long standing custom and practice of reimbursing shift employees for meals obtained from their lockers." (Company Brief, p. 2). It argues that the overwhelming custom and practice throughout the P G & E system, not only at the Kern plant, is for the shift employees to feed themselves from their lockers and accept reimbursement of $1.50.

The Union points out that line crews are often provided with meals, and that equal treatment should be accorded the shift employees. To this the Company replies that the Company's obligation to an employee in a line crew, pursuant to Section 104.2 of the contract, is to "provide him" a meal "if possible." This, it is contended, is quite different from the obligation to provide a meal to shift employees if "practicable." The fact that it is possible to secure a meal, that it was actually done in this case by the shop steward, does not necessarily make it practicable, for the latter term embraces questions of cost, availability of personnel, and access to the plant for outsiders, and not just physical possibility or impossibility. It is the Company's position that it, and it alone, has the discretion to determine what is practicable and what is impracticable.

Opinion

The interpretation of Section 104.12 has given rise to controversy for more than a decade, and this grievance was pursued by the Union as a test case in order to secure a general rule for the future guidance of the parties (Union Brief, p. 8). It should be noted at the outset, however, that the submission agreement limits determination of the issue "as applied to the facts of this case." It would be beyond the competence of the Board of Arbitration to attempt to lay down a general rule in the face of so clear a mandate from the parties. Moreover, such a determination would involve the ascertainment of facts far beyond what was attempted in this case. It would be necessary, for example, to examine the location of all Company plants, their proximity to catering services, the cost of food delivery at different times of the day or night, and the manner in which the contract clause has been interpreted generally.

Limiting ourselves to the Kern Power Plant, it appears that over the years, local management and employees had worked out a reasonable system of feeding shift employees engaged in overtime work, pursuant to the contract provisions. Those employees who wanted to do so kept food in their lockers and heated it on Company-supplied hot plates. Occasionally, if there was enough notice, employees who were coming in on their regular shifts were called and asked to bring sandwiches or other food. And in some cases, the employees preferred to wait until their four hour extra shifts were over and step in at a local restaurant for a meal at Company expense.

This modus vivendi was terminated by the Company notice of August 6, 1958, which sought to limit employees to reimbursement of $1.50 for food which they provided themselves. The question before us is whether this was an appropriate exercise of the Company's discretionary power pursuant to the provisions of Section 104.12.

Under the specific circumstances of this case, we do not believe that it was. The Company sought to show by testimony that there are very few circumstances, if any, in which it is "practicable" to furnish meals on the job to shift employees, either because of expense or limiting physical conditions. In its view, Section 104.12 should be read as though the first half were deleted, with shift employees virtually limited to reimbursement for meals which they provided themselves.

We cannot agree with this interpretation. The meal system in operation at Kern was obviously practicable, as evidenced by the fact that it was in effect for a number of years. Provision of a meal on the job came to include, by custom and usage, the employee's privilege of stopping for a reasonably priced meal at a local restaurant at the conclusion of the shift.

On the other hand, we do not regard as a reasonable interpretation of the contract the Union's insistence that a meal should have been brought in to Mr. Massie. We are impressed with the absence of large scale commercial catering in the Kern area; with the irregularity of the service which would be required; with the general unavailability of personnel to go out and bring food in; and with the cost that might be involved. We doubt that either party intended that the Union Shop steward, or any other employee, should be converted into a regular food messenger. Mr. Massie was entitled only to continue his previous practice of stopping at a local restaurant, with which the Company had made suitable arrangements, to eat his meal at the conclusion of the overtime shift.

The Union is not claiming reimbursement for the costs incidental to procuring the meal, but only for the meal itself, just as though Mr. Massie had actually eaten it at the restaurant. Under the circumstances, he is entitled to reimbursement for the full cost of the meal.

Award

1. The Company was under a contractual obligation to provide a meal for Leland Massie when, on August 26, 1958, he worked four hours beyond his regular quitting time.

2. This obligation could have been discharged by permitting Mr. Massie to take his meal, in the customary manner, at a local restaurant after finishing his shift.

3. Section 104.12 did not require the Company to bring a meal for Mr. Massie into the plant during his extra shift.

4. Under the peculiar circumstances of this case, Mr. Massie is entitled to reimbursement for the full cost of the meal delivered to him on August 26, 1958.

Walter Galenson

Walter Galenson, Chairman

For the Company:

V. Thompson

Vern Thompson

N. E. Rhodes

N. E. Rhodes

For the Union:

Mark Cook, Dissent

Mark Cook

Jack E. Wilson - Dissent

Jack E. Wilson

Dated: May 5, 1960.