Art 7

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INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

GROVE STREET • OAKLAND 12, CALIFORNIA • TWinoaks 3-2141

156

Local Union 1245

August 25, 1958

Dear Sir and Brother:

Enclosed is the decision of the latest arbitration case. This case involves the determining period to qualify for a meal under Sec. 104.2.

This decision states specifically that four (4) hours qualifies a person for a meal. It must be remembered that in connection with this decision that this four (4) hours must be work time and does not include traveling time nor any previous meal time. In general the four (4) hours period is applicable in any situation outside normal hours. Sec. 104.1 does modify this on non-work days. Sec. 104.3 and 104.4 would, of course, be applicable in the instances for which they are stated. The four hour period however would be the measure after the first meal in 104.4.

The meal should be furnished at the end of four (4) hours if it can be done. The only reason for delay would be because of job conditions not permitting it to be done at that time. If it is delayed it can not be delayed more than one (1) hour (or a total of 5 since the last meal or the starting of the job).

Very truly yours,

L. L. Mitchell

L. L. Mitchell,
Asst. Business Manager

LLM:sf

OEIU-29
AFL-CIO
sf82558

ARBITRATION CASE #7

SUMMARY

DETERMINATION OF MEAL ALLOWANCE

BETWEEN

P. G. & E. COMPANY
AND
LOCAL UNION 1245, IBEW

MAY 6, 1958, SAN FRANCISCO

ARBITRATION BOARD:

FOR P.G.&E. - R. J. TILSON
D. K. STUART

FOR UNION - JOHN J. WILDER
M. A. WALTERS

JOHN P. TROXELL, CHAIRMAN AND
NOMINEE BY BOTH PARTIES

GRIEVANT - GEORGE E. TULLY, ELECTRICIAN
HUMBOLDT BAY POWER PLANT

FACTS:

AN ELECTRICIAN HAVING COMPLETED HIS REGULAR WORK DAY AT 4:30 P.M. WAS LATER CALLED FOR EMERGENCY WORK AT 6:30 P.M. HIS ACTUAL WORK TIME, EXCLUSIVE OF TRAVEL TIME, WAS FROM 7:00 P.M. TO 11:00 P.M. AND WHOLLY OUTSIDE OF REGULAR WORK HOURS. AT THE COMPLETION OF THE JOB HE WENT HOME RATHER THAN DRIVE INTO TOWN FOR A MEAL. HE MADE A CLAIM FOR A ONE-HALF HOUR ALLOWANCE FOR A MEAL AND THIS CLAIM WAS OK'ED BY HIS IMMEDIATE FOREMAN; BUT DIVISION MANAGEMENT DISAPPROVED IT. THE UNION FILED A GRIEVANCE CLAIMING A VIOLATION OF SECTION 104.10.

THE DIVISION MANAGEMENT FIRST STATED ITS BASIS FOR REFUSAL TO BE, "THAT IF CIRCUMSTANCES HAD PROMPTED THE EMPLOYEE TO ACTUALLY CONSUME A MEAL (INDICATING A NEED FOR THE SAME) THE ALLOWANCE WOULD HAVE BEEN MADE". THIS POSITION WAS LATER REVISED BY HIGHER MANAGEMENT TO STATE, "IF THE EMPLOYEE HAD BEEN ENTITLED TO A MEAL AND UPON DIS-

MISSAL FROM WORK DID NOT ACCEPT SUCH MEAL, HE WOULD NEVERTHELESS BE ENTITLED TO A MEAL ALLOWANCE OF ONE-HALF HOUR AS PROVIDED FOR IN SECTION 104.10." AT THIS HIGHER LEVEL IT WAS STIPULATED BY THE UNION AND THE COMPANY THAT THE APPLICATION OF SECTION 104.10 WAS DEPENDENT UPON QUALIFYING FOR A MEAL AND IT WAS THUS NECESSARY TO INTERPRET 104.2. AS NO AGREEMENT COULD BE REACHED FOR THE DETERMINATION OF THIS CASE THE UNION FILED THE CASE FOR HEARING BY A BOARD OF ARBITRATION.

THE QUESTION POSED FOR THE ARBITRATOR WAS; "PURSUANT TO THE PROVISIONS OF 104.2 OF THE AGREEMENT DATED SEPTEMBER 1, 1952, AS AMENDED, DID THE COMPLETION OF EXACTLY FOUR (4) HOURS OF EMERGENCY WORK (7:00 P.M. TO 11:00 P.M.) WHOLLY OUTSIDE OF HIS REGULAR WORK HOURS ON A WORK DAY ENTITLE GEORGE TULLY TO A MEAL TO BE PROVIDED BY THE COMPANY?"

COMPANY ARGUMENT:

THE COMPANY SEEKS TO DISTINGUISH BETWEEN THE "GENERAL TERMS" AND THE "SPECIFIC TERMS" OF SECTION 104.2. THE GENERAL TERMS CALL FOR PROVISION OF MEALS "AT INTERVALS OF APPROXIMATELY FOUR HOURS FOR AS LONG AS SUCH (EMERGENCY) WORK CONTINUES..." IN SPECIFIC TERMS, THE EMPLOYEE ENGAGED ON EMERGENCY WORK "SHALL NOT BE REQUIRED TO WORK MORE THAN FIVE CONSECUTIVE HOURS WITHOUT A MEAL IF ONE CAN BE PROVIDED." THE LATTER PROVISION INDICATES WHEN AN EMPLOYEE BECOMES ENTITLED TO A MEAL, OR (TO PUT IT ANOTHER WAY) WHEN HE HAS QUALIFIED FOR A MEAL AT COMPANY EXPENSE.

THE COMPANY STATES THAT AT THE END OF THE FIFTH HOUR OF WORK, OUTSIDE OF REGULAR WORK HOURS, AN EMPLOYEE HAS QUALIFIED FOR A MEAL UNDER THE SPECIFIC LANGUAGE OF THE SECTION. A MEAL MUST BE FURNISHED IF POSSIBLE, EVEN THOUGH THE WORK IS ENDED, AND THE EMPLOYEE RELEASED, AT THAT TIME, "AND THIS OBTAINS ALTHOUGH THE EMPLOYEE WAS NOT PREVENTED FROM EATING HIS USUAL EVENING MEAL." (COMPANY BRIEF, P.4.)

BUT IF AN EMPLOYEE WORKS ONLY FOUR HOURS (OR APPROXIMATELY FOUR), AND IS THEN DISMISSED, HE IS NOT ENTITLED TO A MEAL AT COMPANY EXPENSE, - ASSUMING THAT HE HAS NOT BEEN PREVENTED FROM EATING A MEAL AT THE USUAL TIME THEREFOR. THE WORD "APPROXIMATELY" LEAVES INDEFINITE THE EXACT LENGTH OF TIME THAT MUST BE WORKED BY THE EMPLOYEE TO QUALIFY HIM FOR A MEAL. FURTHER, THE PHRASE "FOR AS LONG AS SUCH WORK CONTINUES" INDICATES THAT THE PROVIDING OF MEALS AT THE DESIGNATED INTERVALS OF TIME WAS CONTEMPLATED ONLY WHEN A JOB CONTINUED FOR A PROLONGED PERIOD. THESE ARE THE COMPANY'S VIEWS.

UNION ARGUMENT:

THE UNION CHALLENGES THE COMPANY'S POSITION ON EACH POINT. IT HOLDS THAT THE CONTRACT CALLS UPON THE COMPANY TO PROVIDE A MEAL AFTER FOUR HOURS OF WORK AT UNUSUAL HOURS IF THERE HAS THUS BEEN CREATED A NEED FOR A MEAL THAT WOULD NOT OTHERWISE EXIST, AS IN TULLY'S CASE. THE UNION CITES THE COMPANY'S STATEMENT THAT A MEAL MUST BE PROVIDED (IF POSSIBLE) AT THE END OF FIVE HOURS OF EMERGENCY WORK, EVEN THOUGH WORK STOPS AT THAT TIME. THE UNION SEES, IN THE LANGUAGE OF TITLE 104, NO ESSENTIAL DISTINCTION BETWEEN THE FOUR-HOUR PERIOD AND THE FIVE-HOUR PERIOD, EXCEPT THAT THE FIVE-HOUR PERIOD IS THE MAXIMUM; BEYOND FIVE HOURS, A MAN CANNOT BE REQUIRED TO WORK WITHOUT A MEAL. IF THE CONTRACT REQUIRES A MEAL TO BE SUPPLIED (IF POSSIBLE) AT THE END OF A FIVE-HOUR PERIOD, IT ALSO OBLIGATES THE COMPANY TO PROVIDE A MEAL (IF POSSIBLE) AT THE END OF APPROXIMATELY FOUR HOURS. THE EXTRA HOUR OF LEE-WAY IS GRANTED TO ENABLE THE COMPANY TO ADJUST THE MEAL HOUR WITHOUT SERIOUS DISRUPTION OF WORK, IT BEING SOMETIMES DIFFICULT TO PROVIDE A MEAL AT THE END OF PRECISELY FOUR HOURS OF WORK.

ARBITRATOR'S DISCUSSION:

IF THE PHRASE IN SECTION 104.2 HAD BEEN WORDED AS FOLLOWS "... AT INTERVALS OF APPROXIMATELY FOUR HOURS FOR AS LONG AS SUCH WORK CONTINUES, PROVIDED THAT SUCH WORK CONTINUES FOR A PERIOD LONGER THAN FOUR HOURS," THE COMPANY'S POSITION WOULD PREVAIL. BUT THE UNDERLINED WORDS ARE MISSING FROM THE SECTION. AND THEY ARE NOT CLEARLY IMPLIED BY THE PHRASE "FOR AS LONG AS SUCH WORK CONTINUES."

WITH REGARD TO THE PHRASE, "- - SUCH EMPLOYEE SHALL NOT BE REQUIRED TO WORK MORE THAN FIVE CONSECUTIVE HOURS WITHOUT A MEAL ..." THE COMPANY HOLDS TO A POSITION WHICH IS, AS THE UNION POINTS OUT, NOT CONSISTENT WITH BELIEF THAT THE UNDERLINED WORDS (IN THE PARAGRAPH ABOVE) MUST NECESSARILY BE IMPLIED. AT THE END OF FIVE HOURS OF SUCH WORK, SAYS THE COMPANY, THE EMPLOYEE HAS QUALIFIED FOR A MEAL EVEN IF WORK STOPS AT THAT TIME.

WE CANNOT READ IN THE WORDING OF THE SECTION A DISTINCTION BETWEEN THE TWO PERIODS OF TIME -- (1) APPROXIMATELY FOUR HOURS, AND (2) FIVE HOURS -- INSOFAR AS THE EMPLOYEE'S ENTITLEMENT TO A MEAL IS CONCERNED. HE IS ENTITLED TO IT AT THE END OF APPROXIMATELY FOUR HOURS. THE COMPANY MAY POSTPONE SUPPLYING IF FOR A TIME, NOT TO EXCEED FIVE HOURS IN LENGTH. THE WORD "APPROXIMATELY" GIVES A DEGREE OF INDEFINITENESS TO THE TIME WHEN THE MEAL MUST BE SUPPLIED. IT DOES NOT HAVE THE ADDITIONAL EFFECT, AS THE COMPANY BELIEVES IT TO HAVE, OF GIVING INDEFINITENESS TO THE EMPLOYEE'S ENTITLEMENT TO A MEAL.

THE COMPANY OBSERVES "THE ONE-HALF HOUR AT THE OVERTIME RATE WHICH IS DEMANDED UNDER THIS GRIEVANCE AMOUNTS ONLY TO EXTRA COMPENSATION". THE SAME OBSERVATION CAN BE MADE WHEN, AT THE END OF FIVE HOURS OF SUCH WORK, A HALF-HOUR IS DEMANDED.

OF COURSE, OUR AWARD APPLIES TO THIS GRIEVANCE ONLY. THE CASE IS ONE WHEREIN EMERGENCY WORK WAS PERFORMED AT NIGHT BY A DAY-SHIFT MAN. DIFFERENT REASONING MIGHT WELL APPLY IN THE CASE OF EMERGENCY WORK PERFORMED UNDER DIFFERENT CIRCUMSTANCES.

AWARD - THE QUESTION SUBMITTED TO ARBITRATION: "PURSUANT TO THE PROVISIONS OF 104.2 OF THE AGREEMENT DATED SEPTEMBER 1,1952, AS AMENDED, DID THE COMPLETION OF EXACTLY FOUR (4) HOURS OF EMERGENCY WORK (7:00 P.M. TO 11:00 P.M.) WHOLLY OUTSIDE OF HIS REGULAR WORK HOURS ON A WORK DAY ENTITLE GEORGE TULLY TO A MEAL TO BE PROVIDED BY THE COMPANY?" IS ANSWERED IN THE AFFIRMATIVE.

Arbitration Case No.7

Pacific Gas & Electric Company
and
Local 1245, International Brotherhood
of Electrical Workers

May 6, 1958

San Francisco

Arbitration Board

Nominated by the Company:
R.J. Tilson, Dir. of Ind. Rel.
D.K. Stuart, Supt. of Electric
Operation - North Bay Division

Nominated by the Union:
John J. Wilder, Business Representative
M.A. Walters, Ass't. Bus. Mgr.

Nominated by both Parties:
John P. Tromell, Chairman

Spokesman for the Company - V. J. Thompson
Spokesman for the Union - Joseph R. Grodin

Grievant - T , Electrician
Humboldt Bay Power Plant

The Parties agreed upon the Question for Submission to Arbitration:

Pursuant to the provisions of Section 104.2 of the Agreement dated September 1, 1952, as amended, did the completion of exactly four (4) hours of emergency work (7:00 p.m. to 11:00 p.m.) on a non-work day entitle T to a meal to be provided by the Company?

The phrase "on a non-work day" was found to be erroneous. It is agreed that the wording should have been "wholly outside of his regular work hours on a work day."

T performed emergency overtime work at the Humboldt Bay Power Plant, starting at 7 P.M. and ending at 11 P.M. At that hour, the nearest open restaurant was in Eureka, some 6 miles away. T 's home, likewise about 6 miles from the plant, lies in another direction. Therefore T , preferring to drive straight to his home and eat something there, refrained from asking for the meal which he believed he was entitled to have, at Company expense. However,

he claimed payment for a half-hour allowance for meal-time. The claim was OKed by his foreman; but the Division Management disapproved it. The matter thus became Grievance #33, Humboldt Division.

The Division's view seems to have been that T had no need of a meal at that hour. At any rate, the Division stated, at one step of the grievance procedure, "that if circumstances had prompted the employee to actually consume a meal (indicating a need for same) the allowance would have been made." At a later step, the Company modified that position, stating, "If the employee had been entitled to a meal and upon dismissal from work did not accept such meal, he would nevertheless be entitled to a meal allowance of one-half hour as provided for in Section 104.10" of the Contract. The Company contends that no term of the Contract entitles an employee to a meal, under the circumstances of this case.

Of the several clauses in Title 104 of the Contract, three have a bearing here:

> 104.1 The provisions of this Title 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 frommeating a meal at approximately the usual time therefor.
>
> 104.2 If Company requires an employee to perform emergency work on his non-work day or wholly outside of his regular work hours on work days it shall, if possible, provide him with a meal at intervals of approximately four (4) hours for as long as such work continues, but such employee shall not be required to work more than five (5) consecutive hours without a meal if one can be provided. This Section shall be construed not to apply to cases wherein work extends beyond regular quitting time on a work day.
>
> 104.10 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 therefor shall be one-half (1/2) hours. If an employee who is entitled to a meal under the provisions of this Title upon dismissal from work does not accept such meal he shall nevertheless be entitled to such time allowance of one-half (1/2) hour.

Clause 104.1 has no bearing on this case, in the Union's opinion. The Company's opinion on that point is stated thus:

> The T[illegible] case brings into focus the difference of opinion between Company and Union as to the meaning of Section 104.2 and the intent of the parties concerning the interpretation and application of the provisions of Title 104 in a practical manner. Section 104.1 needs no construction or interpretation for it leaves no doubt as to the intent of the negotiating parties. It states that the provisions of Title 104 shall be interpreted and applied in a practical manner. It applies to all of the Sections in such Title.

We are thus precluded from attempting to read Section 104.1 and Section 104.2 as a unit, except insofar as we may grant the Company's contention that there is offered to us as a guide, in examining Section 104.2, the phrase from Section 104.1 calling for "a practical manner" of interpretation and application of the Title. Assuredly, we must attempt to apply the Title in a practical manner, whether or not we are urged to do so by contract language.

The Company seeks to distinguish between the "general terms" and the "specific terms" of Section 104.2. The general terms call for provision of meals "at intervals of approximately four hours for as long as such (emergency) work continues...." In specific terms, the employee engaged on emergency work "shall not be required to work more than five consecutive hours without a meal if one can be provided." The latter provision indicates when an employee becomes entitled to a meal, or (to put it another way) when he has qualified for a meal at Company expense.

The Company states that at the end of the fifth hour of work, outside of regular work hours, an employee has qualified for a meal under the specific language of the Section. A meal must be furnished if possible, even though the work is ended, and the employee released, at that time, "and this obtains although the employee was not prevented from eating his usual evening meal." (Company brief, p. 4.)

But if an employee works only four hours (or approximately four), and is then dismissed, he is not entitled to a meal at Company expense, - assuming that he has not been prevented from eating a meal at the usual time therefor. The word "approximately" leaves indefinite the exact length of time that must be worked by the employee to qualify him for a meal. Further, the phrase "for as long as such work continues" indicates that the providing of meals at the designated intervals of time was contemplated only when a job continued for a prolonged period. These are the Company's views.

The Union challenges the Company's position on each point. It holds that the contract calls upon the Company to provide a meal after four hours of work at unusual hours if there has thus been created a need for a meal that would not otherwise exist, as in T 's case. The Union cites the Company's statement that a meal must be provided (if possible) at the end of five hours of emergency work, even though work stops at that time. The Union sees, in the language of Title 104, no essential distinction between the four-hour period and the five-hour period, except that the five-hour period is the maximum; beyond five hours, a man cannot be required to work without a meal. If the contract requires a meal to be supplied (if possible) at the end of a five-hour period, it also obligates the Company to provide a meal (if possible) at the end of approximately four hours. The extra hour of lee-way is granted to enable the Company to adjust the meal hour without serious disruption of work, it being sometimes difficult to provide a meal at the end of precisely four hours of work.

Discussion

If the phrase in Section 104.2 had been worded as follows "... at intervals of approximately four hours for as long as such work continues, provided that such work continues for a period longer than four hours," the Company's position would prevail. But the underlined words are missing from the Section. And they are not clearly implied by the phrase "for as long as such work continues."

With regard to the phrase, "- - such employee shall not be required to work more than five consecutive hours without a meal ..." the Company holds to a position which is, as the Union points out, not consistent with belief that the underlined words (in the paragraph above) must necessarily be implied. At the end of five hours of such work, says the Company, the employee has qualified for a meal even if work stops at that time.

We cannot read in the wording of the Section a distinction between the two periods of time — (1) approximately four hours, and (2) five hours — insofar as the employee's entitlement to a meal is concerned. He is entitled to it at the end of approximately four hours. The Company may postpone supplying if for a time, not to exceed five hours in length. The word "approximately" gives a degree of indefiniteness to the time when the meal must be supplied. It does not have the additional effect, as the Company believes it to have, of giving indefiniteness to the employee's entitlement to a meal.

The Company observes that "the one-half hour at the overtime rate which is demanded under this grievance amounts only to extra compensation". The same observation can be made when, at the end of five hours of such work, a half-hour is demanded.

Of course, our Award applies to this grievance only. The case is one wherein emergency work was performed at night by a day-shift man. Different

reasoning might well apply in the case of emergency work performed under different circumstances.

AWARD - The Question submitted to Arbitration, as amended by substituting the phrase "wholly outside of his regular work hours on a work day" for the phrase "on a non-work day" is answered in the affirmative.

July 3, 1958

John P. Troxell

John P. Troxell, Chairman

We dissent

T J Gibson

We concur

M. A. Valtos

D Stewart

John J Wilder