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In the Matter of Arbitration Between

International Brotherhood of Electrical Workers, Local Union 1245, Union, and **Pacific Gas and Electric Company**, Employer. Re: Grievant (Grievant)	Case No. 319 Arbitration Panel's Opinion and Award

Tri-Partite Arbitration Panel:

Lloyd Cargo	-	Union-designated member
Ed Dwyer	-	Union-designated member
Doug Veader	-	Employer-designated member
Rodney Williams	-	Employer-designated member
Michael Prihar	-	Neutral chairperson

The matter was submitted to arbitration pursuant to the 2012-2014 Collective Bargaining Agreement between the Parties (Agreement) (JX 1).[1]

The matter was heard on January 29 and February 11, 2015, at 30 Orange Tree Circle, Vacaville, California. The Parties were afforded the opportunity to examine and cross-examine witnesses under oath, introduce relevant evidence, and propound arguments in support of their respective positions. The hearing record was closed and the matter submitted for award following receipt and exchange of the post-hearing briefs.

[1] Joint, Union and Employer exhibits are referenced as JX, UX and EX, respectively.

APPEARANCES

For the Union:

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For the Employer:

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BACKGROUND

Pacific Gas and Electric Company (Employer) terminated Grievant (Grievant) for violating an Employer policy prohibiting transportation of alcoholic beverages in an Employer-owned vehicle. Grievant had worked for Employer since June 5, 2000 and, as of 2008, worked out of the Sacramento, California yard as a Gas Service Representative (GSR). Her termination was effective October 9, 2013.

GSRs are considered "first responders" who are responsible for reporting to sites involving possible gas leaks, locating the reported gas leaks, and, if possible, repairing them. If the GSR cannot locate and/or repair a gas leak, the GSR must ensure the safety of the location until appropriate resources can be mobilized to fix the gas leak. GSRs are also responsible for grading the severity of any identified leak (which determines the manner and time frame within which it will be repaired) and for performing meter maintenance and other general outdoor meter work. GSRs are assigned trucks to perform their service duties, and because they perform work on and relating to Employer's gas pipeline system, GSRs are subject to ongoing alcohol and drug testing in accordance with federal requirements.[2]

According to Employer, given the nature of its business and the type of work its employees perform, it has implemented and enforced rules. including a policy in the Employee Code of Conduct prohibiting drug and alcohol use while on duty and transport of alcohol in Employer-owned vehicles, regarding the use and transportation of alcohol due to paramount safety concerns. The Code of Conduct applies to all employees, regardless of whether they are

[2] Employer permits GSRs to take an assigned truck home so they can promptly respond to emergency situations. GSRs who do so are not permitted to use the truck for personal reasons.

subject to the federally mandated drug and alcohol testing. The provision states, in relevant part, "You may not transport alcohol in a PG&E-owned, leased, or rented vehicle unless you have the prior consent of an officer or a director. Employees who violate this alcohol conduct standard may be terminated." (JX $3_{p.\ 14}$).[3] Employer maintained that in recent years, it has sought to emphasize its position on alcohol-related offenses by continually reminding employees of the drug and alcohol policy during annual Code of Conduct and Ethics and Compliance training and weekly tailboard meetings, including that the disciplinary consequences of violating the policy could include termination. Union, however, denied this characterization and disputed that Grievant was ever specifically informed of the rule against transporting alcohol in an Employer-owned vehicle, or that doing so was a terminable offense.

On Monday, September 23, 2013, which was not a scheduled workday for Grievant, Grievant's vehicle was scheduled for maintenance but she had driven it home at the end of her last shift (which was on Saturday, September 21).[4] Field Service Supervisor Steve Lehr (Lehr) was unable to reach Grievant by phone to inquire about the whereabouts of the vehicle for maintenance purposes, so Lehr and another supervisor drove to Grievant's home and retrieved the truck so that it could be serviced. It was while driving the vehicle back to the Sacramento yard that Lehr observed an unopened bottle of an alcoholic beverage (Mike's Hard Lemonade, hereafter referred to as MHL) inside Grievant's assigned work vehicle. The bottle of MHL was next to an empty can of a non-alcoholic drink (Red Bull), allegedly within arm's reach of the driver between the passenger and driver seats. Upon arrival at the yard, Lehr took photographs of the MHL bottle inside the truck (EX $1_{C\text{-}E}$), then removed the beverage from the truck to bring to the office in order to inform his manager and Corporate Security. Corporate Security inspected the truck, whereupon an ice chest containing two beer bottle caps were found in the bed of the

[3] A prior version of the policy from September 2012 was couched in "zero tolerance" terms – "Employees who violate this alcohol conduct standard will be terminated" (UX A, p. 10 (emphasis added)) – but was later revised following a dispute with the Union over the propriety of zero tolerance policies unilaterally adopted by management. One such dispute between the Parties (involving a different zero tolerance policy set forth in the Code of Conduct) was arbitrated in 2012 before Arbitrator Fred D'Orazio. (UX C).

[4] Grievant was permitted to use her Employer-assigned truck to travel to and from work, since she lived within 30 miles of her assigned work location.

truck. Photographs were taken (EX 1_{A-B}) and an investigation was initiated. The Grievant was interviewed during that investigation, (EX 2), and suspended following the interview.

The notes from Grievant's interview on September 24, 2013 reflect that Grievant admitted that the MHL belonged to her (but denied that the beer bottle caps belonged to her). (EX 2). She stated that she had attended a football game on the night of Friday, September 20, with a friend who was drinking alcohol and that, when she and her friend returned home after the game and emptied the car in which they had driven (which belonged to her friend, and was not a Employer-assigned vehicle), she placed the bottle of MHL and some water bottles in her purse to carry them back into her house. Grievant claimed that, when she took her purse and left for work the next morning in her Employer-assigned vehicle, she failed to remove the MHL from her purse as she had forgotten that it was there. During her lunch break that day (Saturday, September 21), when she went to remove her purse from the truck to go shopping, it was at that point that she realized the bottle of MHL was in her purse. Grievant asserted that she intended to dispose of it; however, she was concerned that if she threw it away in sight of others, a bystander might observe her in her uniform disposing of an alcoholic beverage. Therefore, instead of discarding the bottle while on her shift, she placed it in the truck and planned to remove it upon completion of her shift that evening, but forgot to do so as she was preoccupied upon arrival at home with helping her friend's teenage daughter get ready for a Homecoming dance. The bottle thus remained in the truck until Lehr discovered it in the vehicle on Monday, September 23.

On October 9, 2013, Employer issued Grievant a notice stating that it had concluded its investigation concerning Grievant's conduct related to transporting alcohol in an Employer-owned vehicle, and that it had been determined that she violated Employer's Code of Conduct, as a result of which her employment was terminated effective that day. (JX $3_{p.\ 6}$). Union subsequently grieved the termination. (JX 3).

Employer's Position

Employer argued that there was just cause for Grievant's termination because the evidence reflected that she knowingly transported alcohol in her vehicle, intentionally failed to

avail herself of remedies which would have mitigated the penalty for the offense (such as making efforts to dispose of the alcohol or notifying her supervisor of the situation), and was fully aware of the rules prohibiting transportation of alcohol in an Employer-owned vehicle, including that a violation could result in discharge. Employer noted that it was undisputed that, on the morning of Saturday, September 21, 2013, Grievant placed an alcoholic beverage in her truck and did not take any action any time during her shift that day to remove the beverage from her vehicle or contact her supervisor for guidance. Thus, Employer argued that Grievant admittedly engaged in the charged misconduct.

Employer further asserted that Grievant knew (or should have known) that transporting alcohol in its vehicle is a violation of the Code of Conduct and a terminable offense, citing her 13-year history with Employer and regular attendance at Ethics and Compliance training sessions, in which the Code of Conduct was reviewed. (JX $3_{pp.\ 12\text{-}13}$). Employer questioned the credibility of Grievant's testimony on this issue, as well as her actions with respect to her awareness and intent to dispose of the MHL.

Employer claimed that there were no mitigating factors that would warrant a lesser penalty. Namely, Employer cited evidence that, once Grievant realized she had alcohol in her purse (by lunchtime during her shift on Saturday, September 21), she took no action to dispose of the alcohol or call her supervisor to ask for guidance, but rather left the beverage within arm's reach while she was driving and then uncovered in her truck while she went shopping, which reflected poor judgment (and undermined the contention that she "unknowingly" transported alcohol in the vehicle). Employer further claimed that Grievant's dishonesty in the Corporate Security investigation and in the grievance procedure also supported the propriety of the penalty at the time the discharge decision was made.

Employer maintained that its decision here did not result from enforcing the rule against transporting alcohol as a "zero tolerance" policy, as it has opted not to take such a position in light of the Parties' Agreement on Positive Discipline (JX 2).[5] Rather, Employer considers

[5] The current version of the Agreement on Positive Discipline has been in place since 1992. The system sets forth guidelines to, in part, "provide the opportunity to correct deficient performance," and establishes a three-step process of applying discipline (Oral Reminder; Written Reminder; Decision Making Leave). (JX 2).

mitigating factors and did so in this case (but found none to exist), and Employer reasonably determined that Grievant's offense was one of such a serious and egregious nature that it warranted immediate termination in the absence of any mitigating factors. Employer maintained that this approach is consistent with its historical practice of rendering disciplinary decisions regarding employees who have committed similar violations of the alcohol policy, and there was no evidence demonstrating an inconsistent application of the policy.

Finally, Employer contended that certain aggravating factors warranted against reinstating Grievant to a safety-sensitive position, specifically her poor exercise of judgment, inconsistent statements in this matter, and admission that she had never read the Employee Code of Conduct. Employer thereby requested that the grievance be denied.

Union's Position

While Union did not dispute that Grievant engaged in the alleged misconduct, Union argued that there was no just cause for Grievant's termination because: (1) the evidence did not establish that Grievant knew her conduct could lead to termination; and (2) Employer improperly failed to consider relevant mitigating factors, including that Grievant was a 13-year employee with no active positive discipline at the time of the incident. (JX $3_{p.\ 2}$).

Union disputed the Employer's contention that Grievant made any inconsistent statements or was dishonest regarding the incident. According to Union, Grievant consistently testified that (1) the bottle of MHL that was found in her work vehicle did not belong to her; (2) through a serious of innocuous oversights, she inadvertently left the MHL in her work vehicle on Saturday, September 21, 2013; and (3) she was neither aware of the policy's specific prohibition against transporting alcohol, nor of the possibility that she could be terminated for a single offense. Rather, the alcohol policy was never clearly communicated to employees, and Grievant reasonably believed that the policy was more directed at concerns over employees having alcohol on their persons (as opposed to in their vehicles) or being perceived as under the influence. Accordingly, once she realized on her lunch break while parked in her truck that she had the MHL in her purse, she made a quick decision to hold onto the MHL and place it in a

blanket behind the passenger seat out of plain view, rather than carrying it in the open to a public trash receptacle where she could be seen in her uniform with an alcoholic beverage in her possession. Unfortunately, due to rushed circumstances working the remainder of her shift and preparing for the homecoming dance, she again forgot about the MHL upon arriving at home and never removed it from the vehicle.[6] Union maintained that Grievant consistently relayed this version of events in a forthcoming fashion throughout the internal interview and grievance process, and in testimony at this arbitration.

Union further argued that the Employer acted unlawfully by failing to apply progressive discipline – thereby circumventing the Parties' Agreement on Positive Discipline (JX 2) – and instead terminating Grievant inappropriately for a single, unintentional violation of its alcohol policy. Union asserted that Employer thus applied the alcohol policy in a "zero tolerance" fashion that contravened the Parties' agreed-upon mechanism for applying corrective and progressive discipline.

Moreover, Union contended that Employer applied disparate treatment by imposing a harsher penalty on Grievant than another employee who had committed more serious and repeated violations of the alcohol policy. (UX B).

Union thus requested that Grievant be reinstated to her former position with back pay and benefits.

ISSUES

The Parties stipulated to the following issues to be addressed by the arbitration panel:

1. Was Grievant terminated for just cause?
2. If not, what is the appropriate remedy?

[6] Union also denied that there was any credible evidence to suggest that Grievant had purposely placed the MHL within arm's reach, i.e., that she had any intent to access and consume the beverage while driving (particularly in light of the fact that Grievant was taking medication at the time that precluded her from drinking alcohol). Union further claimed that it was not relevant to draw any inferences from the presence of the two beer bottle caps found in the ice chest.

FACTS

The Parties stipulated to the following facts:

1. Grievant's date of hire was June 5, 2000.
2. Her last day of work was September 24, 2013, at which time she was suspended.
3. Grievant subsequently was terminated on October 9, 2013.
4. At all relevant times, her classification was that of Gas Service Representative.

RELEVANT LANGUAGE

COLLECTIVE BARGAINING AGREEMENT (JX 1)

…
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 direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend, and discipline or discharge employees for just cause; … , provided, however, that all of the foregoing shall be subject to the provisions of this Agreement, arbitration or Review Committee decisions, or letters of agreement, or memorandums of understanding clarifying or interpreting this Agreement.

EMPLOYEE CODE OF CONDUCT (JX 3)

…
Use of Alcohol
…
You may not operate a PG&E-owned, leased, or rented vehicle after consuming alcohol, even if consumption is permitted under the exception described above. You may not transport alcohol in a PG&E-owned, leased, or rented vehicle unless you have the prior consent of an officer or a director.

Employees who violate this alcohol conduct standard may be terminated.

AGREEMENT ON POSITIVE DISCIPLINE (JX 2)

…
II. THE POSITIVE DISCIPLINE SYSTEM
…
B. Positive Discipline Steps

When an employee fails to respond to coaching or a single incident occurs which is serious enough to warrant a formal step of discipline, the supervisor will have several options, depending on the seriousness of the performance problem. These options or steps of the Positive Discipline System are:

..

STEP ONE - ORAL REMINDER

...

STEP TWO - WRITTEN REMINDER

…

STEP THREE - DECISION MAKING LEAVE (DML)

> …
> III. TERMINATION
> Termination occurs when Positive Discipline has failed to bring about a positive change in an employee's behavior, such as another disciplinary problem occurring within the twelve (12) month active duration of a [Decision Making Leave]. Termination may also occur in those few instances when a single offense of such major consequence is committed that the employee forfeits his/her right to the Positive Discipline process, such as:
> Theft (See Review Committee Decisions 1451 and 1452)
> Striking a member of the public
> Energy Diversion
> Curb reading of meters
> Notwithstanding the foregoing, if a performance problem which normally would result in formal discipline occurs during an active [Decision Making Leave], the Company shall consider mitigating factors (such as Company service, employment record, nature and seriousness of violation, etc.) before making a decision to discharge, all of which is subject to the provisions of the appropriate grievance procedure for bargaining unit employees. ...
> IV. ADMINISTRATIVE GUIDELINES
> …
> … In lieu of taking formal disciplinary action, the supervisor may opt to coach/counsel an employee, taking into consideration mitigating factors. …

ANALYSIS AND OPINION[7]

I. Analytical framework

An ultimate finding as to whether discipline was for just cause is based on examination of evidence in three areas of inquiry: (1) evidence as to whether the Grievant engaged in the alleged misconduct; (2) evidence as to whether the Grievant knew, or should have reasonably known, that engaging in such misconduct could lead to the imposed level of discipline; and, (3) evidence as to whether the imposed level of discipline is reasonable in light of any attendant mitigating and aggravating considerations. Employer bears the burden of persuasion and may satisfy that burden with a preponderance of the evidence.

II. Alleged misconduct

The sole allegation at issue is that Grievant possessed and transported alcohol, without permission, in an Employer-owned vehicle, thereby violating Employer's Code of Conduct. (UX A).[8] [9]Grievant does not dispute the allegation. She explained that the bottle was a residual from

[7] To concentrate on the determinative, the award does not summarize all evidence or contentions raised by the Parties and taken into consideration.
[8] There was no evidence that Grievant had consumed any alcohol while driving the Employer's vehicle.

drinks purchased and consumed by her friend, Julie Chapman (Chapman) while the two were together at a high school football game. The two had gone to the game in a car owned by Chapman's daughter and driven by Chapman. Chapman had purchased a six-pack of MHL and consumed alcohol during the game, but Grievant did not drink any alcohol [10]so she became the designated driver and drove the car home. Because Chapman's daughter was concerned about the car's cleanliness, Grievant collected any trash that was left in the car and placed it in her handbag. This included an unopened bottle MHL. She later threw the trash away but kept the full bottle of MHL with the intent of giving it to Chapman.

The next day, Grievant grabbed the same handbag, still containing the MHL bottle. She placed the handbag on the passenger seat of her Employer-assigned truck, unaware that the bottle was still in the handbag. During lunch, she went shopping and began to remove items from her handbag to lighten its weight. It was then she discovered the bottle of MHL under other items, including two water bottles. She did not want to dispose of the bottle while she was wearing her Employer-assigned uniform, so she elected to keep the bottle in the truck, out of view, and deliver it to Chapman that evening. Work assignments delayed her return home that day, and when she arrived she was stressed by attendant obligations associated with helping Chapman's daughter get ready for her homecoming and participating in the planned photography session. The attendant stress made her forget the bottle of MHL that remained in the car. The next day, Sunday, Grievant spent time with Chapman before taking her to the airport for Chapman's return trip home. Grievant forgot about the MHL. When she returned home she became alarmed when she noted her truck was missing. She learned from her neighbor that it had been driven away by two Employer employees. Grievant still did not think about the bottle of MHL until the matter was brought to her attention.

While Grievant presented her explanation for why the bottle was in the truck, the fact remained that an alcoholic beverage was found in her Employer-assigned truck. Thus, Employer sustained its burden as to the first element of this inquiry.

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[9] There were two beer bottle caps in an otherwise empty cooler in an ice chest in the bed of the truck, but Grievant had no specific knowledge, only possible explanations as to how they got there. There was no evidence to sustain a finding that she had the beer bottles in the truck, or that she consumed the contents of those bottles.

[10] Grievant credibly testified that she was taking medication and could not drink while taking that medication.

III. Knowledge of rule and associated potential discipline

One of the contested issues stemmed from a disagreement as to whether Grievant knew that Employer's policy prohibited the transportation of alcoholic beverages in its trucks, regardless of whether the container was opened or sealed, and whether she knew that she could be terminated for violating that policy.

Before 2010, employees were allowed to transport alcohol in their trucks. (Tr. 40-41). Employer asserted that between 2010 and 2012, following two tragic gas explosions, it emphasized safety issues, including those associated with drugs and alcohol. In 2010, the governing policy was reinforced, and the reinforced policy made certain alcohol-related offenses subject immediate termination. In 2012, the policy was amended to conform with provisions in the Parties' Positive Discipline Agreement. (JX 2). Violations under the 2010 policy meant absolute termination. The 2012 modification no longer mandated absolute termination but allowed for mitigation. Employer also asserted that employees were continually reminded about prohibitions governing the use of drugs or alcohol during working hours, and about the prohibition in transporting alcohol in Employer's vehicles.

Steven Lehr (Lehr), a Field Service Supervisor and one of the supervisors over Grievant's work group, testified that Employer provides a yearly code of conduct session and that Employer's alcohol policy is also discussed in numerous tailboard sessions. He could not recall specific occasions when the alcohol policy was first discussed but he recalled that it may have been sometime before or around 2010, in conjunction with a year-end holiday luncheon celebration where employees exchanged gifts that at times included alcoholic beverages. Grievant testified about regular tailboards, but could not recall any such thing as an annual Code of Conduct review. Any such event would have been just another tailboard.

There have been subsequent similar discussions about prohibitions against transporting these beverages in Employer's vehicles, and employees are no longer allowed to bring alcoholic beverages as gifts. Lehr testified that the prohibition was communicated to the work group when the festivities were announced, and Grievant assisted in planning and organizing the party during one year. Lehr was uncertain as to whether Grievant attended that event.

With regard to the tailboard session addressing Employer's Code of Conduct, Lehr testified that it was a yearly event, lasting about twenty minutes, with focus on highlights of the Code. (Tr. 37-38). He was uncertain as to which year it was when the alcohol policy was covered, only that it was addressed because it was so important. Lehr did not attend the 2013 tailboard session, which was presided over by Kevin Carver (Carver), another supervisor over the Grievant's work group. Lehr also testified about distributing the Code of Conduct in boxes assigned to each GSR. Grievant testified that "nobody goes through the box unless they say I put this specific tool in your box." (Tr. 169). The boxes were used primarily for storage. This record did not establish that they were actively utilized as means for communication between management and employees. That said, although Grievant could not recall doing so, she acknowledged that she must have come across a copy of the Code of Conduct during her thirteen years as an employee, but she did not read it until it was handed to her during the investigative interview because "I don't do bad things," and it would be common sense to her that an employee should not be drunk at work. (Tr. 170)

Carver, who facilitated the 2013 tailboard, identified the tailboard roster from the September 4, 2013[11] session. (JX $3_{pp12\text{-}13}$). He identified Grievant's signature on the roster and that her signature established she attended the session. Carver testified that, during that session, he reviewed the Employer's alcohol policy during that session, and the policy's prohibition against transporting alcohol in Employer's vehicles. (Tr. 47). He also testified that he told those present that they could be terminated for transporting alcohol in these vehicles. Additionally, Carver testified that he was also involved in the 2012 Code training session, that the alcohol policy was also reviewed during that session, and that the employees were reminded before the year-end parties about the prohibition against transporting alcohol in Employer's vehicles because people would bring alcoholic beverages as gifts.

On cross-examination, Carver testified that the majority of the time allotted for the September 4 tailboard was spent on the code of conduct. On this date, it was approximately one hour. But, he also acknowledged that at times employees are late for the tailboard meeting, or at

[11] Unless otherwise specified, all dates will refer to calendar year 2013.

times they leave early, because they were otherwise engaged in business-related matters. In conjunction with these Code of Conduct reviews, employees are provided with a copy of the Code. Carver was uncertain as to whether Grievant was present for the entire September 4 tailboard.

Keith Dittimus (Dittimus), Corporate Security Investigator for Area 6, interviewed Grievant on September 24 regarding the alcohol Lehr discovered in her truck the previous day. He noted his questions and Grievant's responses during the investigation. As to Grievant's knowledge of the alcohol policy, Dittimus testified as follows:

> Q. DID YOU MAKE A DETERMINATION AS TO WHETHER OR NOT SHE WAS MADE AWARE OF THE POLICY THAT PROHIBITED TRANSPORTATION OF ALCOHOL IN A COMPANY VEHICLE?
>
> …
>
> A. YES, I MADE A DETERMINATION.
>
> Q. AND WHAT WAS YOUR DETERMINATION IN THAT REGARD?
>
> A. THAT -- COULD YOU STATE THE ORIGINATING QUESTION, PLEASE.
>
> Q. YES, WHETHER OR NOT YOU MADE A DETERMINATION ABOUT HER BEING MADE AWARE OF THE POLICY THAT PROHIBITED TRANSPORTATION OF ALCOHOL IN A COMPANY VEHICLE?
>
> A. YES. AND SHE ADVISED SHE HAD BEEN AN EMPLOYEE FOR THIRTEEN YEARS AND HAD RECEIVED ANNUAL REFRESHER TRAINING ON THE CODE OF CONDUCT AND THE COMPANY'S CORE VALUES WHICH INCLUDES THE COMPANY'S ALCOHOL POLICIES AND PROCEDURES. SO YES, I MADE A DETERMINATION THAT SHE HAD KNOWLEDGE OF THAT. (TR. 78-79)

Focusing solely on the issue of Grievant's knowledge, Dittimus' notes and related testimony indicated that he asked Grievant about her understanding of the Employer's policy regarding the possession of alcoholic beverage in its trucks. Grievant's response was that she knew she was not permitted to drink alcohol then drive but that she was unaware there was a policy against carrying an unopened bottle in the vehicle. In that way, she said she believed the policy was consistent with the State's open container law. (EX 2). The knowledge that is at issue is not the alcohol policy in its entirety, but rather the specific portion of the policy that addresses transporting alcohol in Employer-owned vehicles. He questioned Grievant's credibility because, while claiming she did not know the policy against transporting alcoholic beverages in an Employer-owned vehicle, she wanted to dispose of the MHL during lunch. And, while claiming concern about public perception if she was seen disposing the MHL, she placed the can in the truck in a position where it could be seen by someone looking into the truck instead of enclosed places where it could not have been seen. Dittimus' interview questions, and his testimony did

not establish Grievant's knowledge of the specific policy prohibition against carrying any alcoholic beverage in an Employer's vehicle without prior consent.

Grievant testified about how she came to have the MHL in her purse and how she discovered it was with her in her purse in the truck when she went to work on Saturday. She also testified about removing the MHL and a water bottle from her purse during her lunch break to lighten the purse's weight, and then placing the MHL in an area behind her driver seat. She planned on going shopping during her break and wanted room in her purse for possible purchases. She also claimed she thought she would recall that the MHL was in the truck when she got home and that she would throw it away at that time. (Tr. 130). She did not throw the MHL away when she was on her lunch break because Employer had engaged in a campaign to make employees aware of public perception of Employer's image, which included making them aware of what the employees did while on their breaks and lunches or in public view. She was concerned someone might see her if she attempted to throw the MHL in a trash can. Additionally, she felt the drink belonged to Chapman and that it wasn't hers to throw away. She knew employees could not drink on the job, but she did not realize that having the closed container in the truck violated any Employer rules. (Tr. 131). Contrary to Dittimus' conclusions, Grievant's explanation as to why she first thought and then rejected the notion of disposing of the MHL during her lunch break, and her subsequent actions in placing it as she did near some towels in back of a seat where she believed it could not be seen is credible. She was concerned about someone seeing the MHL because of public perception, not because she was aware that its presence meant a policy violation. Lehr believed it could have been seen by anyone who was peering through the driver's side window and looked at an angle across the driver's seat. (Tr. 37). Realistically, anyone claiming to have observed the MLH under such a situation might very well be subject to questioning as to what they were doing looking into the truck so as to have seen the MLH. For all practical purposes, the MLH was not in plain sight and would have only been discovered if there was an incidental examination of the truck.

Grievant's testimony as to what she did with regard to the MHL in her truck and why she did it did not conflict with her assertion that she did not know the policy prohibition about

transporting any alcoholic beverage in the truck, or that such a violation could result in her termination. Her undisputed testimony about what happened and her reaction when she arrived at work on Tuesday, the next day, further supports her claimed ignorance of the specific policy violation:

> …
> [I] WENT IN THE YARD. AND [CO-WORKER CARLSON] DROPPED ME OFF IN THE FRONT. WHEN HE WENT TO GO PARK I JUMPED OUT, WENT IN TO TALK TO LEHR TO FIND OUT WHERE THE TRUCK WAS AT, AND THAT'S WHEN HE INFORMED ME THAT CORPORATE SECURITY WAS THERE TO SEE ME.
>
> Q. OKAY. DID HE TELL YOU WHY CORPORATE SECURITY WAS THERE?
> A. YES.
> Q. AND WHAT DID HE TELL YOU?
> A. HE SAID THAT THEY FOUND A MIKE'S HARD LEMONADE IN MY VEHICLE.
> Q. OKAY. AND WHAT DID YOU TELL HIM?
> A. I SAID, "HA HA." I SAID, WELL, FIRST I WAS LIKE, "AND?" I SAID, "OKAY." AND I SAID, "WELL, YOU ACT LIKE IT'S A HALF OPENED FIFTH OF VODKA, IT WAS, WHAT'S THE PROBLEM?"
> AND HE SAID, "CHARITY, THIS IS VERY SERIOUS. YOU NEED TO GO INTO CORPORATE SECURITY. YOU NEED TO BE 100 PERCENT HONEST AND TELL THEM EVERYTHING. AND THE TRUTH WILL BE ON YOUR SIDE."
> I SAID, "OKAY." AND I KIND OF WAS LIKE, "ARE YOU SERIOUS?" LIKE, YOU KNOW, AT THIS POINT I'M LIKE, "OKAY, I'M IN TROUBLE," YOU KNOW. (TR. 140-141).

When she was interviewed by Dittimus she recalled being asked if she knew the corporate policy concerning alcohol. She said she knew employees were not have alcohol or drugs. When asked when she was informed, she told him that there tailboards and on one occasion there was discussion about an employee who was apparently drunk while at work, and the attendant safety issues. Dittimus then placed the alcohol policy language about transporting or consumption of alcohol and asked her if she was aware of the language. She told him she was not. When she read the portion that said employees will be terminated, she began crying with the realization that she just lost her job. (Tr. 144). Prior to that she assumed that violation of the policy could result in discipline up to termination because "everything says that." (Tr. 144).

Grievant's testimony about how she reacted when she was presented with the Policy, and her assertions about what she believed to have been the policy when she first went into her security interview buttresses her credibility as to her claims in this arbitration that she did not know that the Employer's policy prohibited the transportation of closed containers of alcoholic beverages. She reported to the interview immediately after arriving at work, not knowing before

she arrived at work that there was an issue or that the MHL had been found in the truck. That meant she had little time to try to fabricate her answers during the interview. And those answers and explanations during the interview were consistent with the answers and explanations she offered during the arbitration.

When asked about the tailboards, Grievant claimed that they are held every week and cover various changes in policies or procedures, or new technology. Employees sign an attendance sheet. She could not recall any specific tailboard or the subject(s) covered during that tailboard. She specifically did not recall anyone saying during a tailboard that employees transporting alcohol in a work vehicle will be, or may be, terminated. She recalled being told not to drink on the job because that could lead to discipline, but nothing about transporting alcohol. As for the year-end party, her one-time involvement in the planning of such a party came after an initial decision to cancel the party after an explosion at Rancho Cordova. She wrote to management lobbying for the party and ultimately received permission to have the party. She did not attend that year-end party.

The issue of Grievant's knowledge about the impropriety of transporting alcohol in Employer vehicles was also examined during her cross-examination. Her testimony as to her asserted lack on knowledge of the relevant policy was consistent and credible, as reflected in the following exchange:

> Q. WERE YOU AT ALL CONCERNED, WHEN YOU STATE YOU FOUND THE MIKE'S HARD LEMONADE IN YOUR PURSE, THAT YOU HAD ALCOHOL WHILE YOU WERE ON DUTY IN A PG&E TRUCK IN A PG&E UNIFORM?
>
> …
>
> A. NO.
>
> Q. NOT CONCERNED AT ALL?
>
> A. NO.
>
> Q. WHY NOT?
>
> A. AGAIN, IT WASN'T MINE. I DIDN'T FEEL LIKE I WAS DOING ANYTHING WRONG. I -- I JUST HAPPENED TO BE IN POSSESSION OF SOMETHING THAT DIDN'T BELONG TO ME. I WAS GOING TO RETURN IT LATER. … (TR. 188)

Based on the careful analysis of the relevant evidence, Employer did not meet its burden as to the second element of the just cause analysis. That is, the record does not sustain that Grievant knew that the Employer's policy prohibited transporting closed containers of alcohol in

its vehicles, and she also did not know that engaging in such conduct could, or would, result in her termination. Based on an objective standard, since she knew Employer was concerned about its image, as she demonstrated through her testimony about what she did and did not do after she discovered the MHL, Grievant should have reasonably known that public awareness of an employee transporting any alcoholic beverage would be harmful to Employer's image. Thus, she should have reasonably known that if she was found transporting the MHL she could be disciplined. That said, and in light of the disciplinary guidelines in the Agreement on Positive Discipline (JX 2), there is no objective basis for finding that Grievant could have or should have known she would be terminated for such an offense. The Agreement states that termination occurs after other positive discipline efforts have failed to bring about the desired behavior, or following a single offense of a major consequence. Examples of such offenses share in common evidence of the consequence - e.g., theft, striking a member of the public, diverting energy, or curb reading meters. With theft, the unauthorized taking has occurred. Striking is after the battery has taken place. Diverting energy is after the diversion has occurred, and curb reading is evident after false reading is entered into the system thereby creating a false record and false premise for billing the customer. Here, there was a potential consequence only. The language of the Agreement, in conjunction with that of the policy, does not provide a basis to conclude that Grievant should have reasonably understood that the single violation evinced here could have led to her termination. Since Grievant's conduct did not result in any actual consequence, and there is no basis for concluding that a warning against any repetition would not bring about the desired change in behavior. Grievant should have reasonably expected such a written warning for this single offense.

IV. Reasonableness of the imposed discipline

Based on the foregoing finding, Grievant's termination cannot be deemed as having been for just cause. Grievant's own testimony established that she was aware of Employer's concern for its image, and that a public vision of alcohol in possession of a PG&E employee can be detrimental to Employer's image. Logically, the same would be true about alcohol containers

seen in an Employer-owned vehicle. Grievant was sensitive to that as evident by her placing the MHL behind the seat along with other trash and personal or work-related items she carried in her truck, as opposed to leaving the MHL sitting openly on top of the passenger seat when she took it out of her purse. She should have taken greater care to insure the MHL would not have been seen or discovered, absent some extreme circumstances, once she discovered it was in her purse. For example, she could have left it in her purse and disposed of it as soon as she found herself in an area where she could not be observed by a member of the public.

The Employer's concern with its image and potential liability, should an alcohol container be discovered in one of its vehicles if that vehicle is somehow involved in any incident, is reasonable. However, having concluded that Grievant was unaware of the relevant policy and she did not and should not have known that termination would result for violating that policy, the propriety of the termination *vis-à-vis* the Parties Agreement on Positive Discipline need not be addressed. Here, Grievant's conduct does not sustain discipline other than a warning notice.

AWARD

Based on the foregoing analysis, it is the award of the Arbitration Panel that:

1. The Grievant was not terminated for just cause.
2. Grievant is to be made whole for any straight-time income or benefits lost during the interval between her termination and her reinstatement. This reimbursement shall be adjusted for any income or benefits Grievant received during that interval where such income or benefit would have been acquired but for her unemployment status.
3. Grievant's disciplinary record shall be adjusted to reflect an Oral Reminder based on this incident.
4. The Panel retains jurisdiction over any issue arising from the interpretation or administration of this award.

Michael Prihar,
Neutral Chairperson
Date: March 3, 2016
Camarillo, California

Lloyd Cargo - Union-designated member

I concur ☒ dissent ☐: S/Lloyd Cargo 3/3/2016
Signature Date

Ed Dwyer - Union-designated member

I concur ☒ dissent ☐: S/Ed Dwyer 3/3/2016
Signature Date

Doug Veader - Employer-designated member

I concur ☐ dissent ☒: S/Doug Veader 3/3/2016
Signature Date

Rodney Williams - Employer-designated member

I concur ☐ dissent ☒: S/Rodney Williams 3/3/2016
Signature Date