

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration	:
of a Dispute Between	:
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CITY OF RICE LAKE ELECTRIC UTILITY	: Case 54
	: No. 51304
and	: MA-8565
	:
LOCAL 953, INTERNATIONAL BROTHERHOOD	:
OF ELECTRICAL WORKERS	:
	:

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Appearances:

Mr. Bruce Michalke, Assistant Business Manager, Local 953, International Brotherhood of Electrical Workers, Rice Lake, Wisconsin, by Ms. Kathryn J. Prenn, 715 South Weld, Riley, Prenn and Ricci, S.C., by Ms. Kathryn J. Prenn, 715 South Barstow, Suite 111, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Employer.

ARBITRATION AWARD

Local 953, International Brotherhood of Electrical Workers, hereinafter referred to as the Union, and the City of Rice Lake Electric Utility, hereinafter referred to as the Employer, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a Request for Grievance Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the suspension of an employe. Hearing in the matter was held in Rice Lake, Wisconsin on August 17, 1994. Post hearing written arguments were received by September 19, 1994. Reply briefs were due two (2) weeks afterwards, October 3, 1994. The Union filed a reply brief. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE:

During the course of the hearing the parties agreed upon the following issue:

"Whether the Employer had just cause for suspending the grievant for six (6) days?"

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS:

III. RELEVANT CONTRACT PROVISIONS

Article II - Management Rights

The City possesses the sole right to operate the Utility and all management rights repose in it. These rights include, but are not limited to, the following:

. . .

C. To suspend, demote, discharge and take other disciplinary action against employees for cause;

. . .

J. To determine the methods, means and personnel by which Utility operations are to be conducted;

. . .

L. To establish reasonable work rules and schedules of work. The reasonableness of any work rule is a grievable action.

. . .

Any complaint as to the non-existence of cause in Section C may be presented as a grievance.

Article XVIII - Grievance and Arbitration Procedures

J. The Arbitrator shall have no authority to modify, alter, amend, add to or subtract from any of the provisions of this Agreement.

BACKGROUND:

The Employer operates a electrical utility and an integral part of its operations is Safety. In exercising their job responsibilities the Employer expects all employes to comply with proper safety procedures. The Employer has distributed to employes a safety manual to all employes and therein are the following pertinent rules:

. . .

2.3.2 Line Hose, Insulator Hoods, Blankets, Line Guards, Etc.

a. Before work is begun on or near energized circuits or apparatus, all live or grounded conductors and surfaces with which an employee can possibly come in contact (except that portion of the conductor on which work is to be done) shall be covered with approved protective equipment.

NOTE: Installing and removing protection on circuits shall be considered as working thereon.

. . .

2.5.4.C.

. . .

2. Minimum crew for Rubber Gloving work is two workers, one shall be on the ground or available to the lower controls when an aerial device is used.

. . .

6. A complete survey of the job should be made and a definite plan decided on before work starts.

aa. A careful check should be made of the condition of poles, insulators and conductors at the point of work and adjacent spans and structures.

7. Wherever practical the circuit recloser or other protective device should be set on non-reclosing operation and properly tagged.

On March 16, 1994 the Employer experienced an outage on Circuit N-3. At that time Darrell Scott, hereinafter referred to as the grievant, and Donald Harper were at a location working on Circuit N-3. When the outage occurred Scott Reimer, the Utilities' Electrical Superintendent and the grievant's supervisor, went to the Employer's switchgear room and visually saw breaker N-3 was locked open leaving the circuit de-energized. On March 16, 1994 Reimer wrote the following report:

On March 16, 1994 while on the phone with a vendor we experienced a breaker operation on circuit N-3 which opened, then closed and then opened to lockout position. Don Harper and Darrell Scott were working on N-3 and N-15 in the alley behind St. Vincent De Paul. I immediately went to the switchgear room and visually saw breaker N-3 was locked open thus leaving the circuit de-energized. I then proceeded to contact the crew. Darrell answered, informing me that there had

been a phase to phase contact involving Don and an aluminum tie wire. My first concern was, is anyone injured. The response was, "No, everyone is safe." I then received confirmation that all conflicts were removed from the circuit and then announced that I would re-energize the circuit. At this time approximately 2 minutes had past. I closed the breaker-simultaneously it reopened. Just then Bob Crotteau and Gary Haus came through the north door of the switchgear room stating they had witnessed a violent shaking of the riser pole and possible overhead wires in contact. At this point it was necessary to patrol the entire line. After getting confirmation from crews that all was clear, I re-energized the circuit at 11:05 a.m. The line held and all customers were back in service after an 18 minute outage.

My first conversation with Don and Darrell after the incident centered on the procedures used and the use of rubber cover up material. I informed them both I wanted a report of the incident and have attached to this report. Don wanted me to visit the site, see what happened and the personal protective equipment that was in use. It was noticed that the center phase was charred (black) under the rubber hose. No other visible damage was evident from the ground. Don stated that the tie wire on the north phase had damage due to the electrical contact. Pictures of the site were taken and are enclosed. After review of the safety manual procedures I have the following response:

Section 2.3.2a: "Before work is begun on or near energized circuits or apparatus, all live or grounded conductors and surfaces with which an employee can possibly come in contact (except that portion of the conductor on which work is to be done) shall be covered with approved protective equipment."

Section 2.5.4c2: "Minimum crew for rubber gloving work is two workers, one shall be on the ground or available to use the lower controls when an aerial device is used."

Section 2.5.4-7: "Wherever practical the reclosure or other protective device should be set on the non-reclosing operation and properly tagged."

Section 2.5.4-14: "As tie wires are removed they shall be rolled into a ball or cut off as they are untied."

This incident could have been prevented if the above mentioned safety manual rules would have been adhered to, namely 2.3.2a and 2.5.4-14. Both employees being of journeyman status and trained in the safety of the job are jointly responsible for these actions.

The grievant filed the following report on the incident:

REPORT OF ACCIDENT

March 16, 1994

As we were leaving the shop to resume work on a pole change out, Don informed me that the reclosure on circuit N-15 was shut off, leaving the breaker on one shot to lockout. We were going to install a double alley arm on the new pole to support N-15 heading north up the west alley of downtown. I had truck No. 5 and Don had truck No. 7. Don was set up between the poles so he could work both existing pole and new pole, I was set up in alley to work the new pole. My job was to hold up the end of the arms so Don could bolt them to the new pole below the circuit to be secured. Most of the three - phase circuit of N-15 was covered from the day before, however, I did install two more line hose to complete coverage. As we got the arms in position and bolted, Matt came on job site, he told us he was going to meet Tom to pull meters and couldn't stay there. I told Don that I was going to put material away and bring truck 5 down to reposition on the old pole that supports circuit N-3. Don did not have to reposition. While I was backing the truck into position, I heard a noise, my first thought was that I had backed into something. I checked rearview mirrors, saw nothing and at that point could smell something burning. I jumped out of the truck, looked up at Don and could see burn marks on the north and center phases of N-3. I asked him if he was okay and the reply was yes. I wondered what had happened and asked Don, he told me that a tie wire had gotten between the north and center phase of N-3. At that time Scott was calling the radio to find out what had happened and that we had an outage on N-3. I told Scott not to re-energize until we checked for damage. Don reported no damage and that everything was clear to energize so I told Scott to re-energize. Scott says that he re-energized the line and the breaker opened right away. The whole crew patrolled the entire circuit and found nothing. Scott re-energized the line and power was restored after an 18 minute outage.

In response to charge of not having circuit N-3 reclosure in off position: 2.5.4-7

- 1 - As stated in the safety manual, it is not required it is only recommended.
- 2 - When the accident occurred, I had not begun to work on N-3, I was still backing the truck into position.

In response to charge of safety violation 2.5.2a:

- 1 - Same as No. 2 above, I wasn't even out of the truck and truck was still in motion when accident occurred.

In response to safety violation 2.5.4C2:

- 1 - When accident occurred, I was on the ground and believe that a groundman would not have prevented it from happening.
- 2 - Earlier, when I was up in the bucket, I was not rubber gloving, but only installing cross-arms on a new pole below a completely covered circuit. Both Don and I were wearing rubber sleeves and gloves due to the distance to the energized circuit.

Darrell Scott /s/

On March 16, 1994, Harper submitted the following report:

March 16, 1994

Working on N-3. Untie'g center phase tied in with tie wire. I was working above the wire, holding the tie wire in my left hand. I reached down to cut the tie wire off with my right hand, the wire fell out of my left hand and hit the north phase taking the breaker out on N-3. I had my rubber gloves and sleeves on. The phase was rubber up only the spot that I was working on was bare. I singed by brows and hair.

Don Harper /s/
 Don Harper, Foreman
 RICE LAKE ELECTRIC UTILITY

Also, on March 16, 1994, the following reports were submitted by employes Pociask, Haus and Crotteau:

March 16,
 1994

While driving by Water Street and Main Street we heard Matt trying to call Don or Darrell. We saw that both Don and Darrell were up in the bucket trucks. So we called Matt back and told him that they were both up in the bucket trucks. Then advised Matt that they could use a groundman since they were doing hot work. So Matt responded and he would head over there. Then later we drove by the work site again and Don and Darrell were again in the air with no visible groundman.

Gary Haus /s/
 Gary Haus, Electric Journeyman Lineman

Robert Crotteau /s/
 Robert Crotteau, Electric Journeyman Lineman

. . .

March 16,
 1994

On March 16, 1994 I went over to Water Street where Darrell and Don were working to ask them a question. When I got there I noticed a lot of orange cover up hoses on the lines. When I got out of the van they both came down to the ground. They had their rubber gloves on, etc. I asked them what I needed to know and Tom radioed me and said he would meet me there so we could finish pulling meters. So we left Water Street and went over to W. Humbird after that is when the outage occurred.

Matt Pociask /s/
Matt Pociask, Electric Meterman

Shortly after March 16, 1994 Municipal Electric Utilities of Wisconsin Safety Director Doug Lewis reviewed witness statements, photographs of the scene, visited the scene and interviewed witnesses and then issued the following:

To: Rice Lake Municipal Utility
Scott Reimer, Superintendent

From: Doug Lewis
MEUW Safety Director

RE: ELECTRICAL ACCIDENT ON 3/16/94 RESULTING IN
FLASH BURNS TO DON HARPER

Upon review of statements, photos, and a visit to the accident scene; the following safety rules should have been considered in the job procedure:

I. Vehicle/personnel positioning: Reference MEUW Safety Manual 1.14.7(R); "Baskets should be located under or to the side of conductors or equipment being worked. Raising the basket directly above energized primary conductors or equipment should be kept to a minimum." Don Harper was working over an energized conductor at the time of the accident - this could have been avoided by repositioning a vehicle.

II. Insulating the work area by means of protective cover-up: Reference MEUW Safety Manual 2.3.2(A): "Before work is begun or near energized circuits or apparatus, all live or grounded conductors and surfaces which an employee can possibly come in contact (except that portion of the conductor on which work is being done) shall be covered with approved protective equipment." After review of photos from the accident scene it is apparent all live or grounded conductors were not covered with approved protective equipment. This procedure in itself could have prevented this accident from happening.

III. Minimum rubber gloving crew: Reference MEUW Safety Manual 2.5.4(C.2): "Minimum crew for rubber gloving is two workers; one shall be on

the ground or available to the lower controls when an aerial device is used." Although Darrell Scott was on the ground at the time of the accident, he was working out of another aerial device moments before the accident leaving no one on the ground to assist the person/personnel aloft. While Darrell was working aloft he did install additional cover-up, which is a rubber gloving technique.

IV. Job briefing: Reference MEUW Safety Manual 2.5.4.(C, 6): "A complete survey of the job should be made and a definite plan decided on before work starts." A thorough job briefing (tail gate session) could not have taken place. Darrell Scott stated he was in the process of repositioning his vehicle at the time of the accident. He indicated to me that he thought Don Harper would wait for him to assist with untying the conductors. Don Harper did not wait - Darrell Scott assumed he would. Lack of communication.

V. Circuit breaker positioning while working on energized circuit: Reference MEUW Safety Manual 2.5.4(C.7): "Whenever practical the circuit reclosure or other protective device should be set on non-reclosing operation and properly tagged." This had been done on circuit N-15, but for whatever reason had not been done on circuit N-3, thus causing the reclosure to re-energize the circuit 3 times during the accident before going to lockout. This oversight certainly caused Don Harper's injuries to be worse than needed to be.

VI. Removing tie wire on an energized conductor: Reference MEUW Safety Manual 2.5.4(C.14): "As tie wires are removed, they shall be rolled into a ball or cut off as they are untied." By not following this procedure correctly, a tie wire that was being removed from the center phase on N-3 made contact with the north phase of N-3 causing the accident which resulted in flash burns to Don Harper.

In summary, had the safety procedures identified above been effectively incorporated into this crew's work procedures, this accident could have been prevented. The potential for more serious injury, or death, was evident at this job site.

Thereafter Harper was terminated and the grievant was given a six (6) day suspension. The grievant filed a grievance alleging the Employer's actions violated Article II, Section C, of the parties' collective bargaining agreement. The grievance was processed to arbitration in accordance with the collective bargaining agreement's grievance procedure.

EMPLOYER'S POSITION:

The Employer contends the grievant's carelessness and disregard of established safety procedures are just and sufficient cause for a six (6) day suspension. The Employer argues that the concept of just cause encompasses three (3) basic elements. First, is the offense involved serious enough to warrant discipline or Discharge? Second, was the employe guilty of the action or conduct involved? Third, are there any mitigating circumstances which must be taken into consideration? The Employer argues the conduct which prompted the grievant's six (6) suspension was the grievant's failure to effectively incorporate appropriate safety procedures into the work procedure he and Harper undertook on March 16, 1994. The Employer stresses that safety is a primary concern at the Utility and that it can not prevent injury unless employes understand the hazardous nature of their undertakings and incorporate appropriate safety procedures into their job duties. The Employer argues that not only did the grievant carry out his duties in a careless manner but that he fails to recognize the seriousness of the safety violations involved. The Employer points out that the Circuit N-15 had two lengths of rubber hose on it while Circuit N-3 had very little coverage. Further, that the grievant acknowledged that in the morning staff meeting he and Harper discussed the possibility of working on N-3, that the grievant informed Harper the following: "I told Harper I was going down to reposition the truck to work on N-3.", and at the time the grievant made this statement N-3 was an energized unprotected line. The Employer argues that it was the responsibility of both employes to ensure proper protective covering is used and that as there was a possibility that the two of them would work on N-3 or come in contact with it, safety rule 2.3.2a was violated. The Employer asserts this is a mandatory rule and that two employes executed affidavits that they observed the Harper and the grievant doing aerial work without visible groundmen. The Employer also points out that it was unrefuted that both were up in aerial devices, with gloves on, without a visible groundman. The Employer further points out that Reimer testified this rule has been stressed at staff meetings.

The Employer also contends that the grievant violated rule 2.5.4-7, "protective device should be set on non-reclosing operation and properly tagged...". The Employer acknowledges that recommend is not a mandatory requirement, however, the Employer stresses that common sense would require the circuit be de-energized for added protection. The Employer also argues it does not make sense for Harper and the grievant to verify that Circuit N-15 was closed before they left the shop and to not put Circuit N-3 on manual reclosure. The Employer suggest Harper and the grievant knew that they were going to work on N-15 and N-3 on March 15, 1994. The Employer asserts this was a joint responsibility for both Harper and the grievant.

The Employer also asserts that Harper and the grievant did not conduct a tailgate discussion as required by Safety Rule 2.5.4(C.6). The Employer points out that Lewis concluded a tailgate session had not taken place because the assumptions made by the grievant would not have occurred if there had been communication between the Harper and the grievant. The Employer points out the grievant acknowledged at the hearing he and Harper only discussed the N-15 job in the morning. The Employer argues that as the grievant was aware they would also be working on N-3 the grievant failed to make a definite plan prior to work be conducted on the circuit. The Employer concludes that had the grievant discussed the work assignment project as a whole thoroughly and made a definite plan the incident would of been avoided.

The Employer contends that General Manager Dan Rodamaker and Reimer concluded that as Harper and the grievant were working as a team they were jointly responsible for the various safety violations which contributed to the outage on March 16, 1994. Harper was terminated for his involvement. The grievant was given a two (2) day suspension for each of the three rule violations.

The Employer also contends the record taken as a whole supports a conclusion that the grievant committed various rule violations on March 16, 1994. The Employer contends the grievant's placement of all responsibility for the incident on Harper does not refute the fact that both were working as a team and that with proper communication, as the safety manual requires, incidents like this would not occur. The Employer points out the grievant indicated he was repositioning his truck in order to work on N-3. The grievant also testified this was unplanned work. The fact that the grievant could have called in to have N-3 shutdown is only speculation, and further, it was not done in time to prevent the shutdown.

The Employer also points out that this is not the first time the grievant has been involved in a serious safety violation. On March 26, 1991 he attempted to move a electric pole which had been hit by a car without shutting off the circuit which resulted in a one (1) hour outage. The Employer contends that action was also a violation of Safety Rule 2.5.4-7, and the grievant was informed reclosure should of occurred as a minimum measure. The Employer also stresses the grievant was informed good field judgement must be exercised and another such error could result in termination or time off without pay. Reimer testified the 1991 incident was taken into consideration when the Employer assessed the proper discipline to be imposed. Here the Employer notes the parties' collective bargaining agreement does not limit the consideration of an employe's record to a specified period of time and that the grievant's past conduct in 1991 is similar in nature to the instant matter.

The Employer contends the decision to suspend the grievant for six (6) days was appropriate under all the circumstances involved. The Employer contends a thorough and fair investigation was conducted. Both parties acknowledged that the incident could have been avoided had proper safety procedures been followed. Further, there was a potential for even more serious injury. The Employer contends in took into account the grievant's total personnel record and Harper's involvement imposed a fair penalty, two (2) day suspensions for each perceived safety violation. The Employer concludes the penalty was commensurate with the seriousness of the offense. The Employer also argues that had the grievant been remorseful or had there been some element in his behavior which was convincing that he believed he was responsibly meeting the Employer's expectations the result might have been different.

The Employer would have the undersigned deny the grievance.

UNION'S POSITION:

The Union contends the penalty imposed on the grievant for the incident on March 16, 1994 was not justifiable as the grievant could not be held accountable for events which led to the outage and injury of another employe when that employe was working alone. The Union asserts the grievant informed Harper he was descending in his bucket so that he could reposition his truck to work on Circuit N-3. When working on N-15 the Union asserts all necessary safety precautions were taken thus it was unnecessary to have a man on the ground as specified by Safety Rule 2.5.4(C-2). The Union also argues that as the employes would commence work on N-15 and only after that work was completed would they begin to work on N-3 that it was not necessary to set the reclosure on N-3 at the time they left the Employer's offices to go to the N-15 work site.

The Union argues the grievant took all necessary safety precautions. Further, that the grievant, after informing Harper of his intentions, had no prior knowledge that Harper would proceed to commence work on N-3 alone. The

Union asserts that as the grievant was repositioning his truck he could not be responsible for any violations of safety rules surrounding the circumstances that caused the incident. The Union argues that as there was no way the grievant could have prevented the incident he cannot be held responsible for any of the events which led to the outage or injury.

In its reply brief the Union points out the grievant installed two more line hose to complete coverage of N-15. The Union argues that this indicates that had it been necessary to install line hose on N-3 the grievant would have done so and that this indicates the grievant would have called in to put N-3 position into reclosure if necessary. The Union also stresses that when the grievant informed Harper he was descending to the ground from N-15 Harper informed him he would be also. Thus the grievant had no knowledge that Harper on his own initiative would not lower his bucket but would reposition it and commence working on N-3. The Union concludes the grievant performed his duties on March 15, 1994 in a good workmanlike manner and cannot be held responsible for any errors or violations of another employe.

The Union would have the undersigned sustain the grievance.

DISCUSSION:

The record in the instant matter demonstrates that an incident occurred at a work location which resulted in a electrical outage and the singing of the eye brows and hair of an employe (Harper). The grievant was assigned to be working with Harper at the time of the incident. The grievant was also observed by two employes working in a raised bucket at the same time Harper was working in a raised bucket. The Employer disciplined the grievant for three safety violations: Safety rule 2.5.4(C.2) working without a groundman, Safety rule 2.5.4(C.6) failure to have a job briefing or tailgate session, and Safety rule 2.5.4(C.7) failure to set circuit on non-reclosing operation. The Employer assigned a two (2) day suspension for each safety rule violation for a total of six (6) days. The Union has not argued that any of the safety rules are unreasonable. Thus the undersigned finds that violation of the safety rules herein alleged by the Employer to have been violated would be cause for discipline. However, the burden is on the Employer to demonstrate the grievant did in fact violate a safety rule.

There is no dispute a bucket is an aerial device. While the grievant has claimed he had performed work which did not require rubber gloves, that Harper and him only wore the rubber gloves for additional safety, the grievant did not contend that the work Harper had performed did not require rubber gloves. Thus, when the grievant was observed by two employes in a raised aerial device at the same time that Harper was in a raised aerial device he was not on the ground or in a position to use the controls of Harper's aerial device. Further, the fact the grievant moved his vehicle while Harper was still aloft resulted in him not being in a position to use the controls of Harper's aerial device. In addition, Haus and Crotteau observed Harper and the grievant doing "hot" work and that they needed a groundman. As the grievant was not in a position to operate the controls of Harper's aerial device and he was observed by employes doing "hot" work, he clearly violated safety rule 2.5.4(C.2). Therefore the Employer had cause to discipline the grievant when the Employer suspended the grievant for two (2) days for violating safety rule 2.5.4(C.2). Here the undersigned also notes that had the grievant remained in location until Harper lowered his aerial device he would of been in compliance with safety rule 2.5.4(C.2). However, because he moved his vehicle to a different location while Harper was still aloft he clearly violated this safety rule.

The record also demonstrates the grievant was disciplined for failure to have a tailgate session prior to the commencement of work on Circuit N-3 and

for failure to have the N-3 circuit breaker set on non-reclosing operation. The grievant testified that prior to leaving to commence work on Circuit N-15 Harper and him had a job briefing session on Circuit N-15 and that Circuit N-15 was placed in the non-reclosing position and was properly tagged prior to leaving for the job site. The grievant also testified that Harper and he were unsure as to whether they would complete the work on Circuit N-15 so they did not have a tailgate session on Circuit N-3 and did not place the Circuit N-15 breaker into non-reclosing operation. The grievant also testified that he was unaware that Harper would begin working on Circuit N-3 while he was repositioning his truck. In addition the grievant testified he intended to radio in to the Employer's offices to have the Circuit N-15 breaker placed in non-reclosing operation prior to commencement of work on Circuit N-15.

A careful review of the grievant's report of the incident on March 16, 1994 demonstrates there is no mention of the grievant's claim at the hearing that Harper informed him was going to lower his bucket while the grievant was reposition his truck. Thus there is no evidence to support the grievant's claim that Harper informed him he was going to lower his bucket. However, there is no evidence to support a conclusion that the grievant was at fault because Harper and he failed to have a tailgate session concerning the work to be performed on N-3. The grievant's report of the incident clearly demonstrates that Harper commenced work prior to the grievant being in position to assist. The undersigned finds that the fact Harper commenced working on N-3 prior to the grievant being in a position to assist Harper was beyond the grievant's ability to control. Herein the Employer knew of the grievant's defense from the onset of this matter and there is no evidence presented by the Employer to discredit the grievant's claim. There is no evidence the Employer asked Harper if in fact he commenced work on N-3 prior to the grievant being in position to assist. The burden is on the Employer to demonstrate that it had cause to discipline the grievant for the failure to have a tailgate session prior to the commence of work on N-3. If, in fact, Harper commenced work without the grievant's knowledge or awareness or Harper commenced work prior to the grievant being in position to assist him the Employer does not have cause to discipline the grievant for violating the job planning safety rule. Herein the grievant may not have been in a position to control Harper's actions and the Employer was aware of this defense from the onset of this matter. There is no evidence the Employer attempted to ascertain the veracity of the grievant's claim. The Employer's conclusion that both employees are at fault fails to take into consideration that Harper was able to begin work on Circuit N-3 without the grievant's knowledge. In effect, the grievant's defense is that Harper arrived at the job site first and commenced work prior to his arrival. While such an action may be a clear violation of the Employer's safety rules such an action is beyond the ability of the grievant to control. The undersigned therefore concludes the Employer did not have cause to discipline the grievant for violation of safety rule 2.5.4(C.6).

The record also demonstrates that the grievant was disciplined because the grievant failed to set the Circuit N-3 breaker on non-reclosing operation.

The grievant testified that prior to commencing work on the N-3 circuit he intended to radio in to have the circuit set to non-reclosing operation. The Employer did not dispute that employees have in the past used the radio to have a circuit shut down. Here, as above, the grievant's defense is Harper commenced work on Circuit N-3 prior to his being in position. Thus, Harper commenced work on the Circuit N-3 job prior to the grievant having the opportunity to radio in to the Employer's offices and have the N-3 circuit placed in the non-reclosing position. Here, also as above, the Employer was aware of the grievant's defense, Harper commenced work on Circuit N-3 while the grievant was repositioning his truck. There is no evidence the Employer investigated to determine whether the grievant's claim was true. As noted above, because the grievant was not in a position to control Harper's actions

and because the Employer was aware of the grievant's defense from the onset of this matter and has presented no evidence to refute the grievant's defense, the undersigned concludes the Employer did not have just cause to discipline the grievant for violation of safety rule 2.5.4(C.7).

Based upon the above and foregoing and the evidence, testimony and arguments presented the undersigned concludes the Employer had cause to discipline the grievant for violation of Safety rule 2.5.4(C.2) and that a two (2) suspension was warranted. The Employer did not have cause to discipline the grievant for violations of safety rules 2.5.4(C.6) and (C.7). The Employer is directed to make the grievant whole for the four (4) days of suspension and to cleanse his record of violations of safety rules 2.5.4(C.6) and (C.7).

AWARD

The Employer had just cause to discipline the grievant by suspending him for two (2) days for violating safety rule 2.5.4(C.2). The Employer did not have cause to discipline the grievant by suspending him for two (2) days for violating safety rule 2.5.4(C.6) or to discipline the grievant by suspending for two (2) days for violating safety rule 2.5.4(C.7). The Employer is directed to make the grievant whole for four (4) lost days and to cleanse his record of violations of safety rules 2.5.4(C.6) and (C.7).

Dated at Madison, Wisconsin this 29th day of December, 1994.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator