BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

IBEW, LOCAL 2304, and
BRIAN LARSON

and

MADISON GAS AND ELECTRIC COMPANY

Case 70
No. 58728
A-5835

(Brian Larson Suspension)

Appearances:

Lawton & Cates, S.C., Attorneys at Law, by **Attorney P. Scott Hassett**, on behalf of IBEW Local 2304 and **Mr. Brian Larson.**

Attorney James C. Boll, Jr., Corporate Attorney, on behalf of the Madison Gas and Electric Company.

ARBITRATION AWARD

International Brotherhood of Electrical Workers, Local 2304, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the Madison Gas and Electric Company, hereinafter the Company, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Company subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on May 26, 2000, in Madison, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by June 26, 2000. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated there are no procedural issues and to the following statement of the substantive issues:

1) Was there just cause to suspend the grievant?

2) If so, was the level of discipline appropriate?

CONTRACT PROVISIONS

The following provisions are cited:

ARTICLE IV

. . .

Section 2

A. Grievance Procedure

. . .

2. Grievance submitted directly by the Union – the steps of the grievance procedure shall be:

(a) No more than seven calendar days after receiving the grievance in writing, there shall be a meeting of the department steward, the Union chief steward, the department superintendent, and the Company Human Resources director. If they cannot resolve this grievance, it shall be referred to the following step not more than seven calendar days after the last meeting.

. . .

B. Successful Complainants – Pay. If it is found that an employee has been unjustly dealt with, the employee shall be restored to employee's former position and paid for the time lost.

. . .

BACKGROUND

The Grievant, Brian Larson, began employment with the Company on February 23, 1989 as an Apprentice Lineman in the Company's Electric Distribution Department and after five years had progressed to Class A Lineman, the top level in the classification. The Grievant's first line supervisor is Dennis Steinhorst and above him is the Director (Miller), the Senior Director (Wilke) and the Vice-President – Gas and Electric Operations (Krull).

The Company began preparing in 1997 for potential Y2K rollover problems and spent approximately four million dollars and thousands of man hours in the course of those preparations. In November of 1998, the Company began issuing memoranda concerning limiting the number of persons allowed to be off on vacation or other days off due to staffing needs related to the potential Y2K problems. The memoranda were sent to directors with copies to the Union's President or its stewards. Beginning with a memorandum dated December 23, 1998, the Union was notified that the weeks of April 5, September 6 and December 27, 1999 and the week of January 3, 2000 would be excluded from vacation and "holidays", the latter to include the employe's birthday and anniversary date of employment.

The Grievant concedes he was aware by late 1998 or early 1999 that the Company was not permitting the taking of vacation or holidays the week of December 27, 1999. The Grievant had, however, by that time made a non-refundable deposit for airfare and a hotel room for a vacation in Las Vegas with three friends for the end of the week of December 27, 1999. The Grievant's birthday is December 31st and he and his friends had begun planning the trip in 1996. The Grievant testified he did not advise anyone of his plans after becoming aware he would not get the time off because he felt sure he would be able to sell the trip to someone else. In the meantime, the Grievant attended the two scheduled test runs in April and September of 1999 in rehearsal for December 31st, for which employes were paid overtime.

In October of 1999, the Grievant signed up to take his birthday, December 31st, off, as well as December 30th as a floater for his anniversary day off. The Grievant was subsequently verbally notified that his requests were denied.

On Tuesday, December 28, 1999, the Grievant's supervisor, Steinhorst, stopped by the Grievant's job site at mid-morning. It was at that time that the Grievant informed Steinhorst that he would not be at work at the end of that week because of the trip to Las Vegas. The Grievant testified that he told Steinhorst that he had tried to sell the trip but had been unsuccessful, and that Steinhorst told him that he was probably looking at some time off if he went on his trip. Steinhorst testified that when told of the Grievant's plans to be in Las Vegas instead of at work, he told the Grievant to put it in writing and then went back to the office and informed his supervisor (Miller) and his supervisor's supervisor (Wilke) of the Grievant's

plans. Wilke and Miller subsequently told Steinhorst to inform the Grievant that he would be given a three-day suspension if he was not at work. The next day, Steinhorst went out to the job site where the Grievant was working and had the Grievant get in his truck, at which time he advised the Grievant he would be given a three-day suspension if he missed work at the end of the week. According to Steinhorst, the Grievant appeared to accept what he had been told. The Grievant testified that when he was told he would be given a three-day suspension, he was shocked, and that Steinhorst told him "You'll be out of money either way."

Steinhorst also testified that the Company's Human Resource Department subsequently contacted him and advised him the three-day suspension would not be in effect, that the Grievant's job could be in jeopardy, and that the Grievant should call the Human Resources Department as soon as he returned Monday morning. Steinhorst testified that he then went to where the Grievant was working overtime that evening. The Grievant was the crew leader with two other employes doing emergency work where a vehicle had hit a pole. Steinhorst had the Grievant get in his truck and informed him of what the Human Resources Department had said. Steinhorst testified that the Grievant did not act upset and that there was nothing to indicate that the Grievant was not paying attention to him, and that there was no doubt in his mind that he told the Grievant that his job would be in jeopardy if he went on the trip. Steinhorst conceded that he could not recall if someone was in the bucket at the time he was speaking to the Grievant or if there was a hot wire, but did recall that there was a transformer hanging. Steinhorst also testified that his supervisor, Miller, called the Grievant's home and left a message that he would be terminated if he went on the trip instead of coming to work, and that the message was not garbled.

The Grievant testified that he had tried to sell the trip, but since it was being taken with other friends, he could not sell it to just anyone. He testified that after he told Steinhorst on December 28th that he was going to be going on the trip, the next day Steinhorst came out and had him get in his vehicle and told him that Wilke and Miller had said he would be given three days off. Then, just after the end of the regular work day, on the 29th, he was the leader of a crew of two other employes working in front of the Home Depot where a fan line had been snagged by a truck, causing the transformer to be hanging by only one bracket. The transformer was still energized and needed to be replaced. The Grievant testified that Steinhorst came out to the worksite and told the Grievant to get in his vehicle, but that he cannot recall what Steinhorst said because his mind and attention were on the job being done by his crew. The Grievant testified that he thought Steinhorst talked about the three-day suspension and does not recall him telling him that his job was in jeopardy. Steinhorst was there somewhere between 5 and 15 minutes. The entire job took 30-45 minutes. He concedes that Steinhorst could have told him that his job was in jeopardy at the time, but that it was a dangerous situation at the time Steinhorst was talking to him and he does not recall. The Grievant also testified that he called the Union Steward that evening, Leonard Moe, to tell him

that he was getting a three-day suspension, but did not mention that Steinhorst had talked to him again that day. The Grievant left very early the morning of December 30th for Las Vegas, and called home later that day from Las Vegas to get his messages. He testified there was a message that was garbled and that he could hear laughter at the end and thought it was from some of his friends at work. The Grievant testified that he would not have gone on the trip if he had been told that his job would be in jeopardy or that he would get a 60-day suspension.

The Company's Assistant Vice-President of Human Resources, Joe Pelliteri, testified that he learned from McGuire in Human Resources on December 29th that the Grievant would not be at work on December 31st, and that when he subsequently learned that the Grievant had been told he would get a three-day suspension, he told McGuire to tell the supervisor to advise the Grievant that his job would be in jeopardy. Pelliteri also testified that termination and longer suspensions were discussed as possible discipline, but never anything shorter than the 60-day suspension that was imposed. Pelliteri also testified that he met with the Grievant, McGuire and Moe to discuss the discipline, and that in the course of that meeting, the Grievant indicated he had been aware that he would be disciplined if he missed work on December 31st and conceded that his supervisor could have told him his job was in jeopardy, but he could not recall, and also stated that Miller's message on his answering machine was garbled. Pelliteri conceded that when asked if he remembered being told his job would be in jeopardy, the Grievant responded, "No", and also stated that he had left for Las Vegas before Miller called and left him the message. Both Pelliteri and the Company's Executive Vice-President and Chief Strategic Officer, Mark Williamson, testified that no one else who was scheduled to be there failed to show up at work on December 31st. Williamson also testified that discipline cannot be imposed without approval from Human Resources and that Miller's and Wilke's discussion of the three-day suspension had been without input from the Human Resources Department. He also testified that much of management's discussion regarding the decision to discipline the Grievant involved termination and that it was only because of his good work record and time with the Company that he was given a long suspension in lieu of termination.

The parties attempted to resolve the dispute in the course of the grievance procedure, but were unsuccessful and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

Company

The Company first asserts that there was "good cause" or "just cause" to levy a penalty against the Grievant for his insubordination. There is no dispute that prior to his leaving for Las Vegas, the Company informed him that his failure to work on December 31, 1999 would result in punishment, and the Grievant conceded that he was aware that if he failed to report to

work, it would result in a suspension. The Company cites the dictionary definition of "insubordination" as not submitting to authority and cites case law as being consistent in supporting the principle that insubordination is a legitimate reason for discipline up to, and including, discharge. There can be no dispute that the Grievant's actions fall within the legal and everyday definition of insubordination, and no legal argument can be made that employe insubordination does not legally justify punishing an employe up to and including discharge. The Company also asserts that the widely-used legal definition for "good cause" or "just cause" is a fair and honest cause and reason for termination regulated by good faith on the part of the party exercising the power. Further, arbitrators have observed that the right to discipline an employe for failing to work scheduled overtime is essential as it ". . .prevents a breakdown of authority to direct the work force; otherwise, employes could eliminate all overtime, which would interfere with the operation of the business." SOUTHERN INDIANA GAS AND ELECTRIC COMPANY, INC., 70-2 ARB, Section 8672 (Draper, 1970). Thus, the Grievant's failure to report for work as scheduled on December 31st, and his clear and premeditated disregard of the Company's articulated and written denial of his request for vacation on that date present a fair and honest cause for good faith termination. The Grievant advanced no credible evidence to support an argument that the Company did not have good cause to level a penalty against him.

As to whether the 60-day suspension was an appropriate level of discipline, the Company asserts that the testimony of three of its vice-presidents established that the factors considered in arriving at the suspension included the fact that employes were first informed in November of 1998 that the week of December 27-31, 1999 would be blocked off from vacation and that over the next 14 months through memos, divisional meetings, e-mail postings and dress rehearsals, the Company worked with the Union to continue to notify employes of the importance and need for the necessary personnel to report to work on December 31st, and that in contrast, the Grievant waited until December 29th to notify the Company of his intention not to report to work on December 31st. Also considered were the Grievant's inherently selfish reason for not reporting to work, coupled with the state of emergency all utilities faced during the critical Y2K rollover period. The Company also considered the poor judgment demonstrated by the Grievant's failure to report to work despite the appropriate notice and repeated warning of the consequences of his action. Termination would have been an appropriate response to the Grievant's gross insubordination; however, based on his positive prior work record, the Grievant was only suspended. The Grievant's suspension was not arbitrary, as he was the only necessary employe asked to report for work on December 31st who did not do so. Other cases involving failure to report for work would not be analogous unless they involved an emergency as serious as the Y2K problem, with more than a year's notice to employes that they needed to report for work. The Company concludes that its punishment was well thought out and reasoned at the highest level with a basis in legal authority, and took into account the Grievant's employment record with the Company.

The Company disputes that it overreacted in preparation for the Y2K problem. The Company acted in the best interests of its customers and employes by preparing juridiciously for the potential problems. The Grievant's continued cavalier attitude towards the time and preparation spent on Y2K and the significance of the problem to the Company, and the utility industry as a whole, is persuasive evidence in support of the suspension. The Company's preparation and cooperation of its employes, as compared with other utilities, must be placed in the appropriate context. The Company is the smallest of the utilities with which the Union compared regarding employe attendance for Y2K rollover. Further, the Company required a larger percentage of its work force so that teams of two could be placed in the field for the safety of each employe. Finally, the Company's actions in preparation for the Y2K rollover cannot excuse or be related to the Grievant's failure to report for work.

The Company also finds incredible the Grievant's testimony that he did everything he could to sell his tickets. He presented no evidence to support that contention or that he had even purchased the tickets in 1998. Further, it is well known that an airline ticket can be reticketed for a $75.00 fee. The Company also finds incredible that the Grievant cannot recall any of the 20-minute discussion he had with Steinhorst on the afternoon of December 29th and that he never heard that his job was in jeopardy. While the Grievant testified that he was concentrating on the actions of his crew, he admitted he did not attempt to delay his conversation with Steinhorst so that he could direct his attention on his crew. The Grievant also failed to note that the crew on the evening of December 29th contained additional Class A linemen who would have been equally qualified to assist the crew.

While the Grievant testified that Miller's message was garbled and he could not understand it, Steinhorst testified he was present when Miller called and left the message and affirmed that the message was clear. The Company also takes issue with the contention that notifying the Grievant that his job was in jeopardy in a supervisor's car at a job site was inappropriate conveyance of such a message. The Company was not given the opportunity to convene the parties in a more formal setting because the Grievant gave such late notice of his intentions. Finally, the Grievant's testimony that he would not have gone on vacation if he had known it would result in a 60-day suspension simply demonstrates that he has taken no blame for his actions, and has no remorse for his insubordination. This statement alone demonstrates the Grievant's complete disregard for his fellow employes and the authority of management and a lack of respect for his supervisors and for the time and effort invested in the preparation for Y2K. The statement demonstrates that the Grievant's decision was based solely on his own personal, selfish financial calculations.

The Company concludes that the evidence demonstrates the Grievant's gross, premeditated insubordination, poor judgment, and lack of respect for Company policy and fellow employes. Coupled with his own selfish reasons for not showing up for work, this justifies the Company's suspension and demonstrates that the Company was already being extraordinarily lenient.

Union

The Union takes the position that the 60-day suspension imposed upon the Grievant was grossly disproportionate to the offense and inconsistent with prior disciplinary actions by the Company. The Union notes that the majority of facts are not in dispute, and asserts that the only factual dispute of significance involves the subsequent conversation between the Grievant and his supervisor, Steinhorst, on the afternoon of December 29th, at which the Grievant was allegedly advised that higher-level management officials took a more serious view of the situation than Miller and Wilke. While Steinhorst testified that he passed the message on to the Grievant at the job site on Verona Road, the Grievant denies the message was given to him in the manner described by Steinhorst. The Grievant acknowledges they had a discussion in the vehicle; however, his attention was focused on the job at hand which was an overtime trouble call involving a power outage with a transformer swinging in the air and a member of his crew in an elevated bucket with a hot line. It was a dangerous situation according to the Grievant and he was the crew leader responsible for getting the job done in a safe and appropriate manner. The Grievant called the Union's Chief Steward and Vice-President, Leonard Moe, later that evening and advised him that he believed he was going to get a three-day suspension for failing to work overtime on December 31st. This was verified by Moe. Moe, who knows both the Grievant and Steinhorst, speculated that what likely happened was that Steinhorst simply tried to talk the Grievant out of taking the trip. Moe verified that the Grievant made no mention of any possible discipline more serious than a three-day suspension, and testified that if he had, Moe would have "leaned heavily on him" to work the overtime.

The Union asserts that while the Company expended a great deal of effort, time and money in preparation for the so-called "critical rollover period", as everyone now knows, nothing of significance occurred. Company witness Williamson testified that by the fall of 1999, the Company was "99.9% sure" there would be no computer problems. While Williamson raised the specter of potential sabotage, that issue is not mentioned anywhere in the exhibits offered by the Company. The Union asserts it is not contesting management rights related to staffing levels, or management's rights to make mistakes in that regard; however, the Company opened the door to the issue of its preparation through the testimony of Krull that the Company was consulting with other utilities on Y2K issues, and as to how they were dealing with potential problems. Krull was apparently unaware that comparable state utilities were not even approaching the staffing levels of the Company, and for the most part staffed those levels with volunteers. The Union posits that perhaps upper management took the Grievant's failure to report on December 31st as a personal affront, as opposed to the mid-level management officials who had believed a three-day suspension was appropriate. The Company having attempted to justify this 60-day suspension by evidence of the time and effort it put into the rollover project and how seriously the Company officials took this situation, the actions of the Company's peers in the industry are just as relevant.

With regard to the 60-day suspension itself, the Union asserts that the Grievant is a long-term employe with a perfect work record, and that therefore there is a complete absence of progressive discipline in this case. The 60-day suspension is also completely out of line with past discipline in the Company. Union Exhibit 12 illustrates that since 1970 the Company has issued 23 suspensions, the longest ones being for five days. Of the three five-day suspensions, one resulted from a hit and run accident, one from the use of a Company vehicle for plowing the employe's driveway, and the third for repeated serious safety violations. Violations most comparable to this situation were the five employes in 1980 who were given three-day suspensions for refusing to work overtime. The Union also cites CITY OF COLUMBUS, 96 LA 32, as involving a comparable situation of refusing overtime. In that case, a snowplow operator refused an extended overtime shift during a snowstorm to pick up his son at school. Since the storm was anticipated, the Company felt the employe could have made other arrangements and issued a 20-day suspension. While the suspension was upheld, it was noted that the employe had two recent reprimands and a 15-day suspension in the period leading up to the snowstorm. Both the COLUMBUS case and the 1980 suspensions involving the refused overtime involved actual emergency events rather than the anticipated or perceived events such as the Y2K rollover.

While the Company took the position that the Grievant could have been discharged, and offered Company Exhibit 8 in that regard through the testimony of Pelliteri, Pelliteri acknowledged he had only been with the Company for about a year and offered no testimony as to the nature of the discharges. Conversely, Union President Poklinkoski, who has a 20-year history with the Union, testified he was familiar with two of the "failure to report for work" discharges. One of them involved an employe who was in jail and bound for prison, and the other involved an employe who was a chronic alcoholic who simply gave up. Virtually all of the other discharges for attendance problems or failure to report were probationary employes who simply stopped coming to work. None of those cases were grieved and the employes were not represented. Poklinkoski's testimony was unrebutted.

Last, the Union asserts that Poklinkoski made a final point of considerable significance, testifying that it has been the past practice of the Company, without exception, to bring an employe into the central offices with a steward when advising him that his job is on the line. That is a good practice, as it avoids the very issues in this case in terms of notice and misunderstandings as to what was said. While Steinhorst felt he delivered the message, it was clearly not the proper time or setting to do so during the trouble call. The Grievant testified he did not get the message, and his version is buttressed by the testimony of Moe who verified the Grievant called him later that evening and advised him of the likely three-day suspension. It is also not merely unlikely, but inconceivable, that a long-term employe with a perfect work record in a well-paying skilled profession would risk throwing it all away for a weekend in Las Vegas, if he thought his job was in jeopardy.

The Union requests that the Arbitrator fashion a punishment more appropriate to the crime and consistent with prior disciplinary actions of the Company, and in that regard suggests a three to six-day suspension as more appropriate.

DISCUSSION

The parties have stipulated to the issues of whether there was just cause to discipline the Grievant, and, if so, whether the level of discipline imposed was appropriate. As to the first issue, there is no dispute that the Grievant's failure to work as scheduled on December 31, 1999 merited the imposition of discipline. The real issue is whether the imposition of a sixty-day unpaid suspension is appropriate. There are a number of factors to be considered in this case in determining that issue: the seriousness of the offense, whether the employe was aware of the possible consequences, the level of discipline imposed on other employes for engaging in the same type of misconduct, and the employe's work record and length of service.

With regard to the level of seriousness of the misconduct, it is noted that the Union characterizes the Grievant's conduct as a refusal to work overtime, while the Company characterizes his actions as insubordination. Both are serious offenses and the Grievant managed to commit both of them by his actions. Not only did the Grievant not show up at work on December 30th and 31st, he refused to be there after being told that he would be disciplined if he failed to do so. By his own admission, he was advised he would receive a three-day suspension. As discussed below, it is concluded that he was subsequently advised by his supervisor that he would be putting his job in jeopardy if he went to Las Vegas instead of working those days and he chose to go regardless. Also of significance is the Grievant's failure to notify the Company of the problem until the proverbial "last minute". The record establishes that the Grievant was, as were all employes, made aware of the Company's Y2K staffing plans approximately a year in advance, yet he waited until two days prior to the days in question to advise the Company of his intention to go to Las Vegas on December 30th. Further, as late as September of 1999, he attended and was paid overtime for the practice run while apparently still intending to go to Las Vegas, as in October he requested to take December 30th and 31st off as anniversary day and birthday holidays. The Grievant was told in late October that he could not take off those days and he continued to say nothing to the Company about his intentions at that late date.

As to the Grievant being aware of the likely or possible consequences of missing work on December 30 and 31 to take his trip, he concedes he was at a minimum aware he would receive a three day suspension if he did so. The Grievant's supervisor, Steinhorst, credibly testified that he verbally informed the Grievant late in the day on December 29th that the three day suspension would not be the penalty, that the Grievant would be putting his job in jeopardy if he went on his trip to Las Vegas, and that if he did go, he was to call the Company's Human Resources Department as soon as he returned on Monday morning. The Grievant did not deny

Steinhorst told him his job could be in jeopardy if he went; rather, he testified that he could not recall what Steinhorst said to him during the 5-15 minutes he sat in Steinhorst's vehicle on December 29th, because his mind was on the job his crew was doing at the time. The Grievant's inability to recall any part of a conversation of that duration is simply not credible. Further, it is noted that when the Grievant called Moe that evening to advise him of his situation, he mentioned only the three day suspension and failed to tell Moe about Steinhorst's second conversation with him that day. While the Union attacks the manner in which the Company notified the Grievant, by waiting until two days before he left to tell his supervisor, the Grievant is hardly in a position to complain. The telephone message Miller left for the Grievant the morning of December 30th is, however, discounted, as it came after the Grievant had already left.

We come now to the discipline imposed by the Company in the past for conduct of a similar nature and/or of a similar level of seriousness. The Union notes that a review of all grievances involving suspensions imposed by the Company over the past 30 years establishes that the longest of those suspensions were for only five days, and that five employes who refused to work overtime on two days for scheduled turbine maintenance in 1980 only received three day suspensions. It is noted that the Company characterized their actions at the time as a "wildcat strike" and that vacation was not allowed during the scheduled repair period. The Company, in turn, notes that over the last 30 years it has discharged a number of employes for "failure to report for work." The Company asserts that termination would have been appropriate in this case as well, and that it was only due to the Grievant's positive work record that it was decided to only suspend him for 60 days. However, without more information regarding the circumstances, it cannot be determined whether those cases cited by the Company are sufficiently similar to the Grievant's situation so as to provide guidance as to how the Company has responded in the past. On the other hand, Union Exhibit No. 12 shows that employes have received three-day suspensions for refusing to work overtime and on at least one occasion an employe was only given a one-day suspension for "failure to report to work." Seemingly, the Company has in the past determined, as it did here, that failure to report for work is not always a dischargeable offense; rather, the penalty must take into account the facts in each case.

The question then is, are the circumstances in this case sufficient to distinguish it from the 1980 case involving the five employes who refused to work scheduled overtime on two consecutive days. There are indeed some distinguishing factors in the Grievant's case. As previously noted, the Grievant had almost a year to try to resolve his problem. He could have gone to management as soon as he learned of the Company's plans not to permit the taking of time off on the days in question and explained his problem. If his request to take off those days had been denied, he had ample time to grieve the reasonableness of the denial. He chose

instead to keep it to himself and ultimately, to engage in self-help, as did the employes in 1980. Secondly, he misled the Company until the last minute by not saying anything and acting as though he would be at work on December 30th and 31st, even to the extent of working the practice run in September and receiving overtime pay for doing so. Third, the Grievant demonstrated that a three-day suspension would not be adequate in his case. Ultimately, the purpose of discipline is to discourage the individual employe from engaging in the misconduct. The Grievant made it clear to his supervisor that a three-day suspension would not keep him from going to Las Vegas instead of going to work.

The Grievant's calculated disregard of the Company's interests and its responsibilities to its customers, his failure to attempt to timely deal with the problem, and his last-minute notice to the Company justify imposing a more severe penalty than was imposed on those employes in 1980 who refused to work overtime. That said, the Company has imposed a penalty that is twenty times more severe than the longest suspension it has imposed in the past for similar conduct. While the Company asserts it has already taken the Grievant's good work record into account in deciding to suspend him rather than terminating his employment, the undersigned is not convinced the Grievant's record was given its proper weight. By all accounts, with the glaring exception of this incident, the Grievant has been an exemplary employe in his eleven years with the Company. He has worked more overtime than most and is considered to be capable and responsible enough to be a crew leader in the top lineman classification. Although the Grievant's actions in this case occurred in a time of potentially serious disruption (Y2K), and merit severe discipline, his conduct was not so much more egregious than that of the employes in 1980 to merit a penalty twenty times more severe. In this case, the Grievant's conduct constituted both a failure to work the overtime and insubordination. In looking at the Company's history of imposing suspensions, the longest being five days for any one reason, it is concluded that 60 days is too severe and that a ten-day suspension would be the most that would be warranted for the offenses when taking the Grievant's length of service and exemplary work record into account.

It is therefore concluded that the 60-day suspension was not appropriate and the penalty is reduced to a ten (10) day suspension without pay. The Grievant is to be made whole with regard to the wages and benefits lost to the extent the suspension exceeded ten days.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained to the extent the suspension exceeded ten (10) days off without pay. The Company is directed to immediately make the Grievant whole as to wages and benefits lost beyond the ten days and his personnel file is to be modified to reflect the ten (10) day suspension.

Dated at Madison, Wisconsin this 23rd day of August, 2000.

David E. Shaw /s/
David E. Shaw, Arbitrator

DES/gjc
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