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In the matter of the Arbitration

-between-

COMMUNICATION WORKERS OF  
AMERICA, LOCAL 1101, AFL-CIO

CWA Case No.  
1-08-039  
Verizon Case No.  
A-07-265

-and-

VERIZON, NEW YORK, INC.

OPINION  
AND  
AWARD

Grievant: Andrew Pennant

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BEFORE: JACK D. TILLEM, Arbitrator

APPEARANCES: For the Union:  
CHRISTINA NORUM, Attorney

For the Company:  
SEYFARTH SHAW LLP  
By: PAUL GALLIGAN, Of counsel

Pursuant to the procedure for arbitration contained in the agreement between COMMUNICATION WORKERS OF AMERICA, LOCAL 1101, AFL-CIO and VERIZON, NEW YORK, INC., the undersigned was appointed to hear and decide the grievance involved herein. Hearings were held in New York City on September 16, December 17, 2010, January 11 and February 25, 2011. Post hearing briefs were submitted.

ISSUE: Did Andrew Pennant commit a work time code violation on January 10, 2007?

The grievant Andrew Pennant, a central office technician (COT) and an employee for eight years, was suspended for thirty days for a work time violation in accord with the 1986 New York Telephone letter agreement with the union.

Employees who, on the date of a work time violation, have five (5) or more years of net credited service, shall be:

- a. discharged if, within two (2) years prior to the work time violation, the employee committed a work time violation, or
- b. suspended for a period of up to thirty (30) work days if, within two (2) years prior to the work time violation, the employee has not committed a work time violation.

The letter agreement also sets the arbitrator's authority.

If the Arbitrator finds that the employee committed the work time violation for which the employee was discharged or suspended, the discipline imposed by the Company shall stand. If the Arbitrator finds that the employee did not commit a work time violation, the employee shall be treated in accordance with the provisions of the applicable collective bargaining agreement dealing with suspensions or discharges. No Arbitrator shall have the authority to determine any issue of disparate treatment, or whether or not the employee committed a prior work time violation.

A work time violation is defined in the Company's revised issue of "The Codes We Work By," dated 2/85.

The following are among improper employee activities in connection with work time and are prohibited:

- Conducting personal activities during work time that may interfere with the employee's job.
- Being away from work locations without supervisory permission.
- Failing to proceed from one work location to another in a direct and expeditious manner.
- Falsifying work time reports.

Any of the foregoing or other similar improper employee activities, even for the first occurrence, will result in the employee's dismissal.

Grievant worked a 3 p.m. to 11 p.m. shift at the 97<sup>th</sup> Street facility in Manhattan. Working alone, his job was located on the sixth floor where a street long mainframe and smaller AXT frame are located. Basically the frames are where the leads come in and the wires go out to the customers; the smaller AXT frame essentially contains the wires for apartment house buzzers. Arriving for his shift, grievant would log on to the computer to obtain his work, typically trouble tickets and connect/disconnects or "ins and outs." His direct supervisor was Alberto Crespo whose responsibilities included several buildings including the one on 97<sup>th</sup> Street.

On January 10, 2007, Crespo went to the 97<sup>th</sup> Street facility at around 3:30 p.m. He testified he could not find grievant on the sixth floor. He looked for him in the break room, in the bathroom, and then went to search on other floors. He asked employees around the building if they had seen him – all to no avail. Before leaving about

6 p.m., he generated a ticket in the computer for grievant to call him. The next day Crespo reviewed grievant's time sheet; it showed that grievant had completed four trouble tickets consisting of about two hours twenty minutes work. The rest of the time sheet was filled out with thirteen FOFA tickets, all marked CMP (completed), each exactly twenty-four minutes except the last one, twenty-two minutes, rounding out to the seven hours and thirty minutes – grievant's full shift less the thirty minutes allocated for his lunch break. Crespo's ticket directing grievant to call him was also marked CMP, albeit zero time was ascribed to it.

A FOFA ticket is one which is manually generated as opposed to work that comes through the computer system. The thirteen FOFA tickets on his time sheet were manually input by grievant in which he created work for himself. The time sheet does not state what the work consists of; it only states the amount of time the job took. Grievant was not supposed to create work, Crespo testified; he was supposed to pick up his assignments from ECOT, the computerized system. Crespo said he had spoken to grievant about not creating his own tickets in November 2006. At that time grievant had explained he was "cleaning up the frame," removing excess wires to "improve efficiency." Do not do it, Crespo told him; do the assigned work.

Now two months after that directive, Crespo testified, grievant was again self generating tickets. So the next day, on January 11, he interviewed him with a union representative present. Grievant, he testified, said he was working on the AXT frame, cleaning it up, erasing circuits not needed. Crespo went into the frame to determine if

grievant actually had completed the FOFA tickets he claimed on his time sheet. He checked the phone numbers, found the information had not been updated; the old wires were still on the frame; two of the lines did not even have AXT ties. Crespo concluded that grievant had falsified his work time reports.

On January 17, 2007 the Company issued the following notice of suspension to him:

A meeting was held on January 17, 2007, at 151 East 97<sup>th</sup> Street, NYC, NY to discuss the circumstances of your suspension and warning. Present were Mr. Alberto Crespo (Ce-Supervisor), Mr. Vernon Riddick (Ce-Supervisor), Mr. Waleed Khalil (Union Representative), and Mr. Andrew Pennant (Central Office Technician).

This notice is to inform you that you are being suspended for 30 business days starting today January 17, 2007. You are scheduled to return on **February 28, 2007 at 3:00 P.M.** This letter will serve as a correction to the initial letter that was give to you with a return to work date of March 13, 2007.

Your suspension is for a Work Time Violation. Specifically, on January 10, 2007 you falsified work for 4 hrs and 38 minutes.

This letter will also serve as a warning. Future infractions of Work Time will result in your dismissal and **you will be separated from the payroll.**

Testifying on his own behalf, grievant said he initially worked on four trouble tickets and for the remainder of the night, he did the thirteen FOFA tickets, work he manually generated. Both he and shop steward Waleed Khalil, who also testified, explained what that entailed. Grievant would go to the frame and select a range of blocks

where the circuit equipment was located. He would plug his “test set” or “button set” into the lugs for a particular table and pair to get the telephone number for that circuit. His task was to look for double assignments of ties in the configuration for each circuit he pulled up. If there was an extra tie number on the records, he would test each set of ties to get the phone number associated with each tie. He would list the telephone number and indicate which tie number was extraneous and should be erased from the circuit for that telephone number.

Alternatively, he might find that a tie number needed to be added to the records for another telephone number that came up when he tested a tie. If the records for a circuit had no extraneous ties, he would put those aside. He then compiled a list of the telephone numbers that needed changes to the records and faxed the list to the LDMC, the place where the records are updated. Both Khalil and grievant testified that the job grievant did and the job he said he did, updating the circuit records, did *not* include the removal of the old and unused ties he found.

As the Union sees it, Crespo, unable to find him when he arrived at the facility that evening, had already concluded that grievant was not working. So the next day he decided to look for something else to support that conclusion and fixed on the old ties on the AXT frame. What’s more, the Union says, Crespo, who had never worked as a COT, actually did not understand the work. And then, the Union questions, how does one explain the reference in the notice of suspension to the precise length of the alleged work time violation: 4 hours and 38 minutes – not 39 minutes and not 37 minutes. A head scratcher,

indeed, the Union scoffs, a span of time conjured up out of whole cloth by Crespo and never explained throughout the entire grievance process.

Furthermore, the Union underscores the omission of any evidence that there was other work grievant should have been doing that evening. Although Crespo complained that grievant did not call him, he did not testify that he had other work to assign to him. Grievant, however, testified that had he not worked on the FOFA's, he would not have had any work to do, testimony which the Company did not refute. And finally, the Union says, the Company having charged grievant with a specific work time violation, its attempt to pump up its case with other purported violations should be rejected. The Company must prove what it has charged and having failed to do so, the Union urges that the grievance should be sustained and grievant acquitted of the work time violation.

As the Company sees it, grievant was covering his lateness and filling in his time sheet with FOFA tickets to disguise his lack of productivity. As for the union's claim that he was not supposed to add or remove ties, merely report those that needed it, the Company points to the testimony of Peter Cruz, formerly grievant's direct supervisor from 2000 to 2006. Cruz, a manager familiar with the AXT frame, testified that when he was there he had another COT work on the AXT frame for nine months cleaning it up. He also said that at the Company's request he examined the frame in 2010 and found evidence that the work grievant reported needed to be done was not in fact true. Asked how long it would have taken to complete if grievant was only identifying and reporting ties in need of

updating, Cruz said it was a job which could have been done seated at the computer and would not have taken anywhere near four hours. The Company says the totality of the evidence amply supports the conclusion that grievant committed a work time violation on January 10, 2007.

Although the Union has presented a most thorough and laudable case, grievant's credibility poses a difficult proposition for me. Let's see if we have his story straight. He spent the bulk of his shift going into the computer searching the AXT frame for lines to add or delete; he would then notify LDMC to update the records. How does one say this politely? His testimony makes no sense. Think about it. Grievant's job as a COT is to do the work. What is the point of updating work that hasn't been done? LDMC, as grievant would have it, would then be required to transmit the work back to the COT's to have someone do it. *Catch 22!*

Grievant explained that the work of deleting or adding lines actually had to be done by a two man crew and he was working alone on the shift. His explanation was rejected by Crespo who said that that was his job; both he and Cruz testified the role of adding or deleting lines in the AXT was one easily performed by a COT working alone. Grievant's testimony was also belied by the fact that he had been doing this work alone all along on his shift including that very night when he went into the AXT frame to do four computer generated tickets.



What's more, it was not until he was questioned during the grievance procedure that he first claimed he was merely reporting the work as opposed to doing it. On the next day, January 11, when Crespo asked him what he had been doing, grievant said he was actually doing the work, a form of preventive maintenance, as opposed to merely reporting what had to be done by someone else.

Either way, reporting it or doing it, Crespo had instructed him in November 2006, when grievant was making up his own FOFA tickets, to cut it out. Although grievant purports to have no recollection of that conversation in which Crespo told him not to work on cleaning up the AXT frame and to do maintenance tickets and provisioning work (ins and outs) generated by the computer, Crespo wrote it up in a memo the same day.

#### Discussion 11/9/06

On 11/09/06 Supervisor Alberto Crespo reviewed Andrew Pennant's timesheet for ticket # 312DT0114. Supervisor Alberto Crespo asked Andrew what he did during the 7 hrs and 10 min on the FOFA ticket. Andrew said that is what he had available to work on. Alberto explained to Andrew that he is to work on maintenance tickets that come into the C.O. or and Provisioning work that is available. Alberto advised Andrew that he is not to work on the AXT frame; that was a project that was not needed at this point.

No matter. Two months later grievant does exactly that which his supervisor told him not to do. Well, not exactly; it gets worse. In November 2006, grievant at least claimed to have actually been cleaning up the AXT frame – adding, deleting lines. Now, he simply faxes what has to be done by others. When Crespo interviewed him on

January 11, 2006, he made a record of the questions and answers. There was one other supervisor present and grievant was represented by a shop steward. His answers are illuminating, some eye popping:

AC: Is this an accurate timesheet and representation for your work record from yesterday?

AP: *Yes.*

AC: Why did you create these FOFA tickets:

AP: *'Cause that's what I did last night.*

AC: Why did you work on these lines?

AP: *You're supposed to erase AXT and ADAS lines. We don't need them.*

AC: Why didn't you work on IN's or OUT's?

AP: *Because people on days would not have anything to do. They wouldn't have any IN's to do. The work I do is important, the system is inaccurate.*

AC: Why didn't you work on the ticket I loaded you, FOFA 010DT0138?

AP: *I didn't know who to call. The name or number is not listed on the ticket. It's not my fault.*

AC: That was work assigned to you; to call me. You completed the ticket.

AP: *Yes, but how much time did I take on the ticket?*

AC: We show you took 0:00 time and completed the ticket. Is this correct?

AP: *Yes.*

AC: The information is right here on the ticket, why didn't you call the number that is listed?

AP: *I didn't open the ticket; I don't need to trouble shoot the ticket. The tracking key just says CALL. I didn't know who to call so I didn't open the ticket.*

AC: What time did you leave last night?

AP: *10:30 P.M.*

AC: What time is your tour? 3:00 P.M. to 10:30 P.M.

AP: *How long is your tour? 7.5 hours.*

AC: How long is your lunch? Half an hour.

AP: *What time did you take lunch? We don't take lunch.*

AC: Andrew we had this discussion before, your tour is 3:00 P.M. to 11:00 P.M. and you have to take your half hour lunch. Do you understand?

AP: *Yes.*

So there you have it: grievant didn't do the work assigned to him because he wanted to insure that the technicians on the day shift would have enough work to do, and he didn't call his supervisor because he apparently couldn't be bothered to open the ticket. Yet he marked it CMT nonetheless. And then there is the fact that although his tour was 3 to 11 P.M. with a half hour for lunch, he left that evening at 10:30 P.M., despite having been previously instructed to take his lunch and work his full shift to 11 P.M..

A word, too, about the testimony of Shop Steward Waleed Khalil who testified that grievant did the work he was supposed to do: check the frame, write up what needed to be done and send it out to update the records. In support of his testimony, Khalil pointed to the faxes offered in evidence by the Union showing grievant had done exactly the same type of work on several days in December 2006 and January 2007 prior to January 10<sup>th</sup>. What are we to make of his testimony? Not too much, I'm afraid.

First of all, Khalil didn't work on the sixth floor; the last time he worked on a frame was in 2001. Second, he didn't know what work was assigned to grievant when grievant purportedly faxed reports. Third, his testimony prompts the question: why,

when grievant had been instructed not to do it anymore, was he continuing to create FOFA's? And finally, in all candor, Khalil's testimony left the impression that he could as readily be left out of the context of his unionism as Captain Ahab can be rehabbed as an environmental lobbyist.

The Company never having explained how it arrived at precisely four hours and thirty-eight minutes for the work time violation, the Union eschews the entire Company's case as a pile-on; a smorgasbord of all sorts of allegations in a feeble attempt to fill in that length of time. Surely, the Union asserts, it is entitled to an explanation if the Company is to prevail. The Company, to be sure, has the burden of proof. Yet that doesn't mean it must prove its case with scalpel-like precision; suffice that it satisfies its burden by a preponderance of the evidence. And while the Union has a point in wondering how the Company arrived at that length of time, if you look at the totality of what grievant did that day – or perhaps more accurately, what he didn't do – the evidence would justify a finding that four hours and thirty-eight minutes may well be a conservative estimate. Let's go to the credible evidence.

- Grievant was not at work at 3 P.M., the start of his shift; his supervisor Crespo still could not find him in the building when he left at 6 P.M.
- Grievant did not call Crespo despite having the ticket which instructed him to do so.
- Grievant falsified his time sheet with the entry that he completed the ticket directing him to call his supervisor.
- Grievant falsified thirteen FOFA tickets to "clean up the system," work which he had been ordered by his supervisor not to do. Put another way, having done only four

computer generated tickets, grievant spent the bulk of the shift disobeying his supervisor.

- Grievant falsified his time sheet in stating he completed the FOFA tickets when in fact he did not do the actual work.
- Having been instructed previously to take his lunch during the shift, grievant again disobeyed his supervisor by leaving early that day because, he said, "I didn't take my lunch."

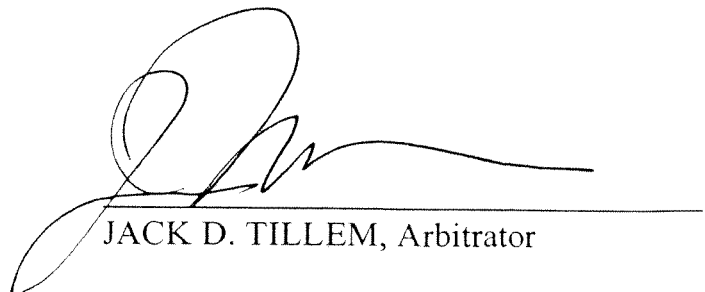
The Union assails all of this as a "pile-on." I suppose that if you take each one of these proven facts as a separate stick, it's one way of looking at it. But I think it makes more sense to view grievant's conduct as a bundle of sticks comprising virtually the entire shift as a single work time violation: he was away from his work location at the start of his shift; he was away from his work location at the end of his shift; he falsified work time reports; and he disobeyed the instructions of his supervisor.

The answer to the issue posed is yes and the grievance denied.

AWARD

Andrew Pennant committed a work time violation on January 10, 2007.

Dated: July 12, 2011



JACK D. TILLEM, Arbitrator

STATE OF NEW YORK )  
COUNTY OF NASSAU ) SS:

On the 12<sup>th</sup> day of July, 2011, before me personally came and appeared JACK D. TILLEM, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that the same was executed by him.



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2011 JUL 12 PM 4:00  
DANIEL K. O'NEIL  
Notary Public, State of New York  
No. 00000000000000000000  
Qualified in Nassau County  
Commission Expires Nov 30 2014