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April 17, 1989

FEDERAL EXPRESS

Mr. Bruno Uryc
U.S. Nuclear Regulatory Commission
Region II
101 Marrietta Street, N.W.
Suite 2900
Atlanta, Georgia 30323

RE: April 27, 1989 Enforcement Conference

Dear Mr. Uryc:

On Friday I spoke with Mr. Dick Goddard in connection with the enforcement conference that is scheduled for April 27 in Atlanta. He suggested that I send you the attached transcript of the administrative hearing on Mr. Paul Blackburn's complaint against Metric Constructors. We believe that the hearing record, together with other information we will present at the enforcement conference, strongly supports the position that enforcement action against CP&L under 10 C.F.R. § 50.7 is not warranted.

If I can provide you with any additional information prior to the enforcement conference, please let me know.

Sincerely,

Dale E. Hollar

Dale E. Hollar
Associate General Counsel

/fpf

Attachment

BEFORE THE

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:	)	Case No: 86-ERA-4
PAUL A. BLACKBURN,	)	
Claimant,	)	
v.	)	
METRIC CONSTRUCTORS, INC.,	)	
Employer.	)	

Pages: 1 through 104

Place: Columbia, South Carolina

Date: December 16, 1985

Acme Reporting Company

Official Reporters

1220 L Street, N.W.

Washington, D.C. 20005

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BEFORE THE UNITED STATES DEPARTMENT OF LABOR

In the Matter of:	
PAUL A. BLACKBURN	
Complainant	Case No. 86-ERA-4
V.	
METRIC CONSTRUCTORS, INC.	
Respondent	

Room 837
Strom Thurmond Federal Building
Assembly and Richlands
Columbia, South Carolina

Monday
December 16, 1985

A hearing in the above-entitled matter was held, pursuant to notice, at. 9:00 a.m.

BEFORE: HONORABLE THEODOR P. VONBRAND
Administrative Law Judge
Hampton, Virginia

APPEARANCES:

For the Complainant:

M. MALISSA BURNETTE, Esq.
Gergel & Burnette
1711 Pickens Street
Columbia, South Carolina 29201
(803) 779-8080

APPEARANCES (Cont.):

For the Respondent:

CHARLES M. BURDETTE
6060 Saint Albans Street
Charlotte, North Carolina 28287

I N D E X

I N D E X
(Cont.)

EXHIBITS (Cont.):	IDENTIFIED	RECEIVED
Respondent's Exhibits:		
R-6	7	8
R-7	7	8
R-8	7	8
R-9	7	8
R-10	7	8
R-11	7	8
R-12	7	8
R-13	8	8

P R O C E E D I N G S

HONORABLE THEODOR P. VONBRAND: On the record. This is a hearing under the Energy Reorganization Act, in the case of Paul A. Blackburn, versus, Metric Constructors, Inc., case number 86-ERA-4.

I am Theodor P. VonBrand, the Administrative Law Judge assigned to conduct the hearing in this case and render a decision in this case.

This hearing is being held in Columbia, South Carolina on December 16, 1985.

Our first order of business will be the statement of appearances. Ms Burnette?

MS BURNETTE: Your Honor, I am Malissa Burnette with the law firm of Gergel, Burnette and Nichols of Columbia, South Carolina, representing the Claimant, Mr. Paul Blackburn.

JUDGE VONBRAND: Thank you. Mr. Burdette?

MR. BURDETTE: I'm Charles M. Burdette, House Counsel for the Respondent, Metric Constructors, Inc. I am from Charlotte, North Carolina.

JUDGE VONBRAND: As I understand the issues, first we have the issue raised by Respondent's motion to dismiss, namely that the complaint was not timely filed and secondly, that the complaint was not filed in the proper form. Next, I understand that the Complainant is urging that he was discriminated against, contrary to the provisions of the ERA

because he was terminated for refusing to work on the grounds that such work would be hazardous to his health.

It is further my understanding that Respondent denies that this is protected activity on the grounds that the Complainant failed to express any safety concern when he refused to work on September 4, 1984.

Ms Burnette, does that accurately summarize the issues we have before us today?

MS BURNETTE: Yes, Your Honor.

JUDGE VONBRAND: Mr. Burdette?

MR. BURDETTE: Yes, sir. If I might add one more thing, it is the further contention of the Respondent that not withstanding the discharged employee's failure to cite safety concerns to the supervision of his employer for his failure to work, that any such safety concerns were not well founded, and were nonexistent.

JUDGE VONBRAND: So, now, we have the issues as you see them?

MR. BURDETTE: Yes, Your Honor.

JUDGE VONBRAND: Off the record.

(A brief discussion was held).

JUDGE VONBRAND: On the record. Ms Burnette, do you wish to make an opening statement?

MS BURNETTE: Your Honor, I would like to just call our witness at this point.

JUDGE VONBRAND: All right. We will do that, just as soon as we receive the exhibits. Mr. Burdette, do you wish to make an opening statement?

MR. BURDETTE: No Your Honor.

JUDGE VONBRAND: Ms Burnette, would you identify and offer your exhibits?

MR. BURNETTE: Yes, Your Honor. Complainant's Exhibit No. 1 is a copy of a newspaper article from the Florence Morning News, dated September 12, 1984.

Exhibit No. 2 is a letter to Mr. Blackburn from Mr. Uryc of the NRC, dated September 29, 1984. Exhibit No. 3 is the Complainant's handwritten description of his complaint, dated September 16, 1984.

Exhibit No. 4 is a letter to Mr. Blackburn from Ms Cook of the South Carolina Department of Labor, dated October 4, 1984.

Exhibit No. 5 is a letter to Mr. Blackburn from Mr. Rowe of the US Department of Labor, dated October 11, 1984. Exhibit No. 6 is a letter to Mr. Blackburn from Mr. Uryc of the NRC dated December 28, 1984.

Exhibit No. 7 is a letter to Mr. Blackburn from Mr. Leon Smith, US Department of Labor, dated July 31, 1985.

(The documents above-referred to were marked for identification as Complainant's Exhibits Nos 1 through 7).

MS BURNETTE: Exhibit No. 8 is a letter to Mr.

Blackburn from Mr. Stuckey, US Department of Labor, dated September 6, 1985.

(The document above-referred to was marked for identification as Complainant's Exhibit No. 8).

MS BURNETTE: Exhibit No. 9 is a letter to Mr. Stuckey from Mr. Burdette, dated September 13, 1985. Exhibit No. 10 is a letter to Mr. Burdette from Mr. Stuckey, dated October 25, 1985.

(The documents above-referred to were marked for identification as Complainants Exhibits Nos. 9 & 10).

JUDGE VONBRAND: Mr. Burdette, any objection?

MR. BURDETTE: Let me take a llok at them.

MS BURNETTE: I believe I sent you copies.

MR. BURDETTE: No objection.

JUDGE VONBRAND: Complainant's Exhibits 1 through 10 are admitted, and Mr. Burdette, would you offer and identify your documents?

(The documents above-referred to , heretofore marked for identificaion as Complainant's Exhibits 1 through 10, were received).

MR. BURDETTE: Yes, Your Honor. As Respondent's Exhibit No. 1, we have a copy of the General Employee Training Manual, published C & L, levels one and two retraining.

(The document above-referred to was marked for identification as Respondent's Exhibit No. 2).

MR. BURDETTE: As Respondent's Exhibit No. 2, we have

the Student Workbook for General Employee Training for Carolina Power and Light. Respondent's Exhibit No. 3 is the student workbook for radiation, level two, published by CP & L.

Respondent's Exhibit Four is entitled, Containment Vessel Surveilance Program, dated September 4, 1984. Respondent's Exhibit no. 5 is the Exposure Record Sheet for the year 1984 for Mr. Paul Blackburn.

Respondent's Exhibit No. 6 is entitled, Termination Report, Occupational Radiation Exposure, dated September 5, 1984. For Mr. Paul A. Blackburn.

Respondent's Exhibit No. 7 is the Testing Report Program for Mr. Paul A. Blackburn. Respondent's Exhibit No. 8 is a compilation of the radiation exposure records for Metric electrical crews in 1984.

Respondent's Exhibit No. 9 is a Radiation Work Permit Survey, dated September 5, 1984, Respondent's Exhibit No. 10 is a radiation work permit survey, dated September 4, 1984.

Respondent's Exhibit No. 11 is a radiation work permit analysis, dated August 28, 1984. Exhibit No. 12 is an August 1984 ALARA Concerns publication.

(The documents above-referred to were marked for identification as Respondent's Exhibits Nos. 3 through 12).

MR. BURDETTE: Exhibit No. 13 is a September, 1984

ALARA Concerns publication.

(The document above-referred to was marked for identification as Respondent's Exhibit No. 13).

JUDGE VONBRAND: Ms Burnette, any objection?

MS BURNETTE: No, Your Honor.

JUDGE VONBRAND: Respondent's Exhibits One through 13 are received. Off the record.

(The documents above-referred to, heretofore marked for identification as Respondent's Exhibits 1 - 13, were received).

JUDGE VONBRAND: On the record.

MS BURNETTE: We would call Mr. Paul Blackburn.

Whereupon,

PAUL A. BLACKBURN

was called as a witness by and on behalf of Counsel for the Complainant, and after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Ms Burnette) Would you please state your full name for the record?

A Paul A. Blackburn.

Q Are you also known as Tony?

A Yes, ma'am.

Q Are you married?

A Yes, ma'am.

Q Is this your wife, Ruth, here?

A Yes, ma'am.

Q Do you have any children?

A Yes, ma'am. Two.

Q How old are they?

A Eight and four.

Q Where do you live, Mr. Blackburn?

A Darlington, South Carolina.

Q Is that where you have lived all your life?

A Yes, ma'am, except for one brief stay in Virginia.

Q What is your education?

A High school graduate.

Q Have you had any other training, beyond the high school level?

A I took some courses in industrial wiring to sharpen my skills a little bit.

Q Since graduating from high school, where have you worked?

A I've worked all over North and South Carolina, with Daniel Construction Company, Beaconn, Metric and Data Select.

Q What type of work do you do ?

A I'm an electrician.

Q Have you ever been discharged from your employment by anyone other than Metric?

A No, ma'am.

Q Have you ever been reprimanded, prior to your being

discharged from Metric? Have you ever been reprimanded in any other job?

A No, ma'am.

Q When did you begin working with Metric?

A It was around March of 1984.

Q March 28th?

A Yes, ma'am.

Q Where were you assigned to work?

A When I first went there, I was on an outside crew until the security clearances came in and then I was transferred to a container crew.

Q Where was this?

A This was in the reactor building.

Q At the Robinson Plant?

A Yes, ma'am.

Q What was your hourly wage?

A Twelve dollars an hour.

Q How many hours did you work every week when you started?

A For around the first three months, we worked 40 hours and then, we went into overtime, which was 60 or 70 hours a week.

Q On approximately what date did you begin working overtime on a regular basis?

A Around July.

Q Did you have to work around a lot of radiation in this job?

A Yes, I did.

Q Are there limits to the amount of exposure a worker like you could receive?

A Right.

Q Tell us about that.

A As I remember, I think the NRC requires a maximum of 1250 millirems a quarter and CP & L kept you more than about a 250 buffer, which was about 1000.

Q So, in each quarter, you tried to avoid getting more than 1000 millirems?

A Right.

Q How was this monitored?

A We used thermoluminescence dosimeters and the regular pocket dosimeters, which you can look at all the time.

Q How does that work?

A It's just a little cylinder type thing with a scale on it and as the radiation passes through your body, it makes the scale go up.

Q Do you wear that on you when you are exposed to radiation?

A Right.

Q When you come out, can you read it and see how much radiation you have received?

A Right.

Q How did you learn about radiation and safety procedures?

A We took a training course required upon being hired on the job. Every employee has to go through it.

Q What does ALARA mean?

A ALARA is as low as reasonably achievable.

Q Did you receive training in that?

A Right.

Q WHat was that?

A It has to do with planning your job, the time and distance and shielding to protect you and get the job done in less time.

Q On this particular quarter, September of 1984, how many millirems of exposure had you received?

A I don't think I had any for that quarter.

Q Tell us about the events of September 4, 1984.

A September 4th,which was the day after Labor Day, we came back in and met where all our crew meets and we had a safety report which was at the start of every week. Being as how we were off on the holiday, we had it that next day. I read the safety report to the crew. That was Bobby Young's crew. In it, it said that there was a lot of shielding being removed from the reactor building. And, we discussed safety glasses, hardhats and more or less, the same thing we always

do. From where I was standing, you could look into the RCA lay down yard and see the shielding, itself, out scattered in it.

Q Had you worked in the reactor before?

A Right, I had.

Q Had the shielding been up then?

A Yes, ma'am.

Q What did you learn about the shielding, if anything?

A Well, shielding reduced a lot of your radiation exposure. Radiation won't pass through lead, where it will paper or any such thing.

Q On this particular day, you said that the report included information about the shielding being removed?

A Right.

Q What else? Go ahead.

A Later in the morning, my foreman, Bobby Young, he come up to me and told me that we was--some guys was being transferred to another group to go inside the reactor building to do some changes on some wiring that was wrong.

I told him okay, but I didn't have my dress out clothes, which I normally took with me so I wouldn't get my clothes contaminated. You had an option of wearning them or not.

Q Tell the Judge what that means, when you bring your dress out clothes.

A Well, it was cut off blue jeans or just jogging pants or just anything you wore up under your protective clothing in case your clothing got contaminated by water or any such thing, you'd have something to come out in. In other words, so you wouldn't have to strip bare. If you do get yourself contaminated, you'd have to take your clothes off in front of everybody. You'd forget your modesty, which didn't bother me, but some people, it does.

Q Did you bring your extra clothing every day?

A We had lockers we left them in.

Q Did you have your clothing with you on September 4th?

A Not on the fourth.

Q Were you asked to go with this other crew?

A Right, I was asked to go with the crew and I told him I didn't mind and he said, "Well, seeing as how you haven't got your clothes, just wait till tomorrow and be sure to bring them in."

Q The next day was September 5th?

A Right.

Q What happened on September 5th?

A I went to my normal job, the one I was working on and later he came and said, "Are you ready to go?" I said, "Yes." So, I left and went towards the crew I was supposed to be working on. I walked through the dress out area and looked at the surveys as I passed through, and I left out of there

and went and looked for my foreman I was supposed to meet. I didn't find him, so I went back through and checked the surveys again. Some of the guys I was supposed to go in with, which there was ten of us, they said, "We're going to be sent in a real hot area," said it would be a pump bay under the floor, which would have been a high rad, a locked high radiation area.

So, I checked some of the surveys and being as the shielding was out, naturally, the radiation limit was going to be more.

Q What did you see on the surveys?

A Well, they were much higher than normal.

Q Did you then, look for your foreman again?

A Yes, I did. There was a hustle bustle with everybody trying to get organized. I never did run into the foreman, but I went back to my foreman and told him what I felt, that it was unsafe to go into the reactor building because of the lead shielding being taken out. This was Bobby Jones.

Q Did you talk to a Quality Control Technician?

A Yes, I did. I met him. The job I was performing on the outside, he was my technician.

Q What was his name?

A His name is Mr. Richard Miles.

Q Do you know where he is now?

A No, ma'am. I don't.

Q Did you learn anything from him?

A Yes, ma'am. He told me that the radiation in there was substantially higher . A week before, he had been in the hatchway where he picked up no radiation, and just in the hatchway entry, the radiation was 85 millirems, he said.

Q What did you do then?

A I went back and told my foreman that I didn't think it was safe for me to go in there, or any of the rest of us people until the shielding was put back in.

Q Did you refuse to go at all, or just until the shielding was back up?

A I told him that I didn't mind doing the job, that I knew when I hired on that the job as a radiation worker, you would get certain amounts of radiation, but I didn't feel safe about the job and it just was unsafe.

Q This morning, did you look at the Employment Manual that Respondent is going to introduce into evidence?

A Yes, I did.

Q Did you find a section that you were trained with that gave you responsibility for yourown safety?

A Right.

JUDGE VONBRAND: Could you identify that by exhibit number?

MS BURNETTE: This would be Respondent's Exhibit No. 1.

Q (by Ms Burnette) Would you please look on page 16?

Q Would you read that statement on page 16?

A Each employee at CP & L must assume full responsibility for his/her personal safety.

Q Would you read again on page 76?

A Each worker shares in the responsibility for radiation exposure. Each workers is also obligated to report any unsafe or potentially unsafe practices to CP&L. If there is no response by CP&L, report to the NRC.

Q Did you believe that you were following the procedure as set out by this manual?

A Yes, ma'am. These are on bulletins that are posted all over the plant.

Q Had you ever had exposure in large amounts in the past?

A Well, I was in there one other time and we had a pretty good amount of exposure for five days. I assume we was.

Q Were you terminated as a result of your reporting that you felt it was unsafe for you to work in that area?

A Yes, ma'am.

Q Tell me about your termination. What happened?

A Well, I told Bobby Young how I felt and he said, "Well, I can not make you go in a place like that because I don't have the authority, but I will talk with our superintendent, Horace Howell, and see what he has to say." Well, I don't know who told Horace Howell or give the hand down, but

my foreman came back to me later on, at about 8:30 and said "We're going to give you until break time to tell us what you want to do. Like I say, we can't make you go in there, but if you don't, we'll have to terminate you."

JUDGE VONBRAND: Who is Bobby Young?

MS BURNETTE: He was the foreman.

JUDGE VONBRAND: Your foreman?

THE WITNESS: At that time.

JUDGE VONBRAND: All right. Proceed.

Q (by Ms Burnette) Go ahead.

A Well, at break time, he said, "I'll need to know what your answer's going to be." Well, I went into the break which was approximately 9:00 and we sat down, I sat down at the table where my crew always takes their break at and all the guys in there told me, "If you don't feel it's safe, don't do it because you don't have to." I told those guys I didn't mind doing the job, but I didn't feel it was safe.

Bobby Young came in before the break was over and said, "Well, what's it going to be?" And, I told him, "Well, if they put the shielding up and make it a safe job, I'll do it. But, if it's not, I won't."

So, at that time, he left and went to talk to Horace Howell again and came back and told me that at 10:00, I would be terminated.

Q Were you terminated at 10:00?

A Yes, ma'am.

Q Did you try to contact a representative of the Nuclear Regulatory Commission that day?

A Yes, ma'am, I did, but my clearance was taken away real fast. I was hustled out before I could do any talking to anybody.

Q Was there a representative on the site?

A Yes, ma'am. There was a Site Representative of the NRC.

Q Did you later contact the NRC?

A The Friday after.

JUDGE VONBRAND: The Friday after would be what date?

MR. BURDETTE: September 12th, Your Honor.

JUDGE VONBRAND: Do you agree?

MS BURNETTE: Yes, Your Honor.

JUDGE VONBRAND: Proceed.

Q (by Ms Burnette) This is Exhibit No. 1, can you identify that?

A Yes, ma'am. This is a fine that was dropped.

Q Is that a newspaper article?

A Yes, ma'am. I cut it out of the Florence Morning News.

MR. BURDETTE: Your Honor, I would like to interject an objection. I don't object to the article, itself, but I fail to see the relevance at this particular juncture.

JUDGE VONBRAND: Well, let's put it this way: I'm not sure that this witness is competent to testify about what this article means, unless it goes to strictly his state of mind.

MS BURNETTE: That is exactly what it goes to, Your Honor, because it shows his state of mind to call the Department of Labor.

MR. BURDETTE: May I ask what the date of the article is?

MS BURNETTE: September 12, 1985.

MR. BURDETTE: That was approximately a week after this incident occurred. Thank you. Go ahead.

JUDGE VONBRAND: Off the record.

(A brief discussion was held).

JUDGE VONBRAND: On the record. Proceed.

Q (by Ms Burnette) Did you read that article on September 12th?

A Yes, ma'am.

Q Did you take any other action on September 12th?

A Yes, ma'am. I notified the Department of Labor.

Q How did you notify them?

A Well, I called on the telephone and asked for somebody to talk to.

Q Was that the South Carolina Department of Labor or the US Department of Labor?

A South Carolina Department of Labor.

Q What else did you do with regard to them?

A I went to talk with the lady and she told me it sounded like a good case and she was going to get this lady from OSHA to come down and talk to me, too.

JUDGE VONBRAND: Which OSHA are you talking about?

THE WITNESS: It's the State, the State OSHA. Her name was Gaynelle Cook, the lady over the department at OSHA. She came in and she heard my testimony on what happened and she said it seemed to her that it was a good case and that afternoon before I left, she told me to go home and write a letter to her, certified, addressing from t e time I started the job until the time I was fired, everything that happened, which I did.

Q (by Ms Burnette) Is this the letter you wrote?

A Yes, ma'am.

Q That is Exhibit No. 3?

A Yes, ma'am.

Q In the meantime, you contacted the NRC?

A Right.

Q Can you identify this letter?

A Yes, ma'am. That's a letter from Bruno Uryc. He's from Atlanta, Georgia, a representative.

JUDGE VONBRAND: What is the exhibit number and the date of the letter?

MS BURNETTE: It is Exhibit No. 2, and the date of the letter is September 29, 1984.

Q (by Ms Burnette) He received your complaint. Is that correct?

A Yes, ma'am.

Q Did you hear anything more from Ms Cook of the South Carolina Department of Labor?

A Yes, ma'am. I got a letter later stating that CP&L disallowed them or OSHA to even be permitted on the job.

Q Did you receive a letter from Ms Cook on October 4, 1984, Exhibit No. 4?

A Yes, ma'am. Yes, I did.

Q Would you read that letter into the record, please?

A On September 19, 1984, the Occupational Safety and Health Division received your complaint alleging job discrimination and retaliation for protective safety and health related activities.

Since your complaint does not fall within the jurisdictional coverage of the South Carolina Department of Labor, Occupational Safety and Health Division, we have taken the liberty of forwarding same to the US Department of Labor for their review and appropriate action. If you have any questions, please contact the person and office at the address indicated below.

Thank you for your interest in occupational safety

and health. Gaynelle Cook.

Q Did you think that your complaint had been taken care of at that point?

A Yes, ma'am.

Q Did you receive further correspondence from the US Department of Labor? Exhibit No. 5?

A Yes, ma'am.

Q What is that? What is the date of that letter?

A October 11, 1984.

Q Would you read that letter into the record?

A Dear Mr. Blackburn, your complaint alleging employee discrimination and subsequent termination from employment with Carolina Power and Light Company was forwarded to this office from the South Carolina Department of Labor, OSHA.

The complaint has been forwarded to our Regional Operations Review Officer in Atlanta for appropriate action. You will be contacted by someone from that office. In the event you wish to contact that office, you may do so by calling (404) 881-2921, or writing to the address listed below.

Q Did you try to make contact with that Atlanta office?

A Many times.

Q Did you get any response or conclusion from them?

A The first few times, they didn't know who was handling the case, but later on, I got a call from this man

named Don Twovell would be the Investigator on the case.

Q Did he ever talk with you or contact you?

A Yes, he did. He drove in and he stayed in Darlington one night and I met with him, I believe, on a Friday morning and he took a tape recording of my side of the story, and also took notes.

Q In the meantime, did you receive further information from the NRC, Exhibit No. 6?

A Yes, ma'am.

Q What is the date of that letter?

A December 28, 1984.

Q What was the NRC's conclusion?

A They initiated a review and evaluated it and they couldn't find anything to substantiate my concerns.

Q What was the date of that investigation?

A The 29th of September, 1984. I'll read this. It says, "Your concerns were addressed during an inspection conducted at that facility during the period of October 29 to November 2, 1984."

Q What was the date of your termination?

A September 5th.

Q Did you hear any more from the US Department of Labor?

A No, ma'am, I didn't.

Q Until what date?

A Until July 31, 1985.

Q What exhibit number is that?

A Seven.

Q What did that letter say?

A Your complaint alleging discrimination and termination from Metric Construction Company has been forwarded to this office from the South Carolina Department of Labor, OSHA.

Our investigator, Don Tuvell, has contacted you and many witnesses. After discussion with our legal staff, it has been determined that we do not have proper jurisdiction at this office. This case is now being forwarded to the United States Department of Labor, Atlanta, Georgia.

You will be contacted by someone from that office, or you may wish to contact them in writing. This was signed by Leon P. Smith.

Q You did not receive any communication from October of 1984 until July of 1985 from the Department of Labor. Is that right?

A That's right.

Q Is Exhibit No. 8 another letter you received from them?

A Yes, ma'am.

Q What is the date of that one?

A September 6, 1985.

Q What does that letter tell you?

A This says--I'll read some of it. This will acknowledge receipt of your complaint against Metric Construction Company alleging violations of Energy Reorganization Act. Your complaint was received in this office on August 19, 1985.

Q Which division of the Department of Labor is this?

A Wage and Hour.

Q Did you know that the company had responded to that complaint?

A No, I didn't.

Q What is Exhibit No. 9?

A This is a letter from Jerry L. Stuckey from the United States Department of Labor in Columbia, South Carolina.

Q Who is that addressed to?

A It's addressed to Mr. Stuckey.

Q Who is it from?

A This is from Mr. Burdette.

Q This is when Metric was responding to the Department of Labor?

A Right.

Q Did you receive a decision or determination in your case from the Department of Labor?

A Yes, ma'am.

Q What is the date of that?

A October 25th of 1985.

Q Which exhibit number is that?

A Ten.

Q Without reading the whole letter, just summarize the contents of that letter.

A For one thing, it said I have a good work record from the date I was hired. It said we found no evidence to indicate that he was habitually tardy or absent or he was ever insubordinate in any way with regard to his superiors.

There was legitimate concern for his safety due to lead shielding being removed and thus, higher levels than normal of radiation being received by anyone going into the containment building.

This concern was shared by other fellow employees, as well. As a result, Mr. Blackburn was fired. We found nothing to indicate that company officials made any effort to determine whether there was in fact an immediate safety concern. Instead, Mr. Blackburn was discharged on the spot.

Q As you know, the company appealed. Is that right?

A Right.

Q Did you do everything that you could to press your claim, Mr. Blackburn?

A Yes, ma'am. I did.

Q Were you doing all this on yourown?

A A lot of it.

Q Did you have the assistance of an attorney at this

time?

A Not until I hired you to help me in the case.

Q When was that? Was it after that decision?

A Yes, ma'am.

Q Since the time you were terminated, have you attempted to get other employment with CP&L?

A No, ma'am. I didn't. Around October, I didn't have any--I'd been fired, so I couldn't draw unemployment and in the meantime, I did contact a company that worked on the same job, called Power Plant Maintenance. This man I knew from a long time ago, Henry Marie, he hired me to go to work for his company. THen, he found out I was blacklisted from CP&L, so I couldn't go on the property.

Q Did you have to look for other employment then?

A No, ma'am. He sent me to Roxboro, North Carolina and I went on to work with them.

Q Since that time, for a period of over a year, have you had to periodically seek other employment?

A Yes, ma'am.

Q Did you incur travel expenses in seeking that other employment?

A A lot.

Q Do you have some information on that?

A Yes, ma'am. I do.

Q What kind of travel expenses have you incurred?

A The places I looked for work which was out of town was a maintenance job at Carowinds, a job at Bowater, a job at Charlotte, North Carolina and four trips to Southport, North Carolina.

Q Did you keep track of the expenses you had in that travel?

A Yes, ma'am. I did.

Q What is the total amount of expenses for that travel?

A Just in gasoline alone, for those four trips was $155.00.

Q Have you worked at several different places since you worked at Metric?

A Yes, ma'am. I have.

Q What are the places you worked and how much did you earn?

A I worked at Power Plant Maintenance, as I said, and I made $404.00 from them. After I left there, I went to Daniels Construction Company in Surrey, Virginia, which at that time, I made $10,335.00. I left there, and went to work at Beecon Construction Company in Southport, North Carolina, which I made $8800.00. I'm presently working at Daniels Construction Company at Eastover, South Carolina and presently, I've made $38,030.00, which would be a grand total of $23,406.00.

Q That is the total of what you have earned since you

were terminated from CP&L?

A Yes, ma'am.

Q Have you done some calculations on the amount of money you earned at Metric for when you worked there from March until September?

A Yes, ma'am.

Q Approximately how much did you earn during that period?

A I think it's around $15,540.00.

Q How many weeks did you work there?

A At Metric?

Q Yes, sir.

A I have down here, 66 weeks, I worked.

Q How long did you work there?

A 24 weeks.

Q Did you determine what your average weekly pay was?

A Yes, ma'am. It was somewhere around $647.00, average.

Q Did you desire to continue working at Metric?

A Yes, ma'am. I did, because it was only 19 miles from home.

Q Had you worked at Metric from the time you were terminated until today, based on what you were making before, how much would you have made?

A I figure it around $42,702.00.

Q You earlier stated that you had worked at other jobs

and earned $23,000 and some?

A Yes, ma'am.

Q What is the difference between those two figures?

A I have a figure of $19,296.00.

Q On these other jobs you worked,they were not near your home, were they?

A No, ma'am. They weren't.

Q Did you incur living expenses in maintaining two homes?

A Yes. ma'am. I sure did.

Q Would you tell the Court about some of the expenses your incurred?

A Yes, ma'am. I have here, expenses away from home, in Surrey, Virginia, my motel rent was $1,176.00. After I finally moved out of the motel, I got a camper lot and the lot rent on it was $90.00. The electricity I paid was $39.00. The building permit to put my camper on the lot was $26.00. Groceries, I figure, was around $740.00, and other accessories I had to get, to buy to pull my camper were a trailor hitch, which was a Reece's special design hitch, which was $268.00 and a sway bar which was $80.00, and my gasoline was $750.00, and I come up with a total figure of $3,169.00.

Q That was for Surrey, Virginia?

A Yes, ma'am.

Q Did you work somewhere else, as well?

A Yes, ma'am. I left there and I went to Southport, North Carolina. At that time, I stayed with my mother which was only 60 miles from the job, and I paid her a total of $600.00 rent.

Q WHat other expenses did you have?

A Later on, I pulled my camper to a lot, after there was some available lots open down in Southport, and my lot rent was $320.00. My groceries were $240.00, phone calls was $60.00, and my gas was $1100.00 for the period of the time I was hired through the time I left.

Q How far did you have to commute?

A For about the first three months, I commuted 60 miles one way.

Q Where are you currently working?

A I'm working at Eastover, South Carolina.

Q You drive from Darlington to Eastover every day?

A Yes, ma'am.

Q Have you incurred expenses for gasoline?

A Yes, ma'am. I figure around $550.00.

Q What is the total of the expenses you have incurred at Surrey, Southport and Eastover?

A I figure somewhere around $6,039.00.

Q You also have incurred attorney's fees, have you not?

A Yes, ma'am. I have.

Q What was the hourly rate we agreed upon?

A $80.00 an hour.

MS BURNETTE: Your Honor, I would like to submit an affidavit concerning attorney's fees for myself, and I have a copy for Counsel.

JUDGE VONBRAND: Thank you. Did you have any further questions?

MS BURNETTE: Yes, Your Honor.

Q (by Ms Burnette) Mr. Blackburn, you said that after you were terminated, you applied for another job and found out that you had been blacklisted?

A Yes, ma'am.

Q You put in another application?

A Yes, ma'am. I put in application after application for maintenance jobs and I've had not one call from them. I think personally, it has hurt me as an electrician, being blacklisted around the area that I stay in and the companies I work with, the applications I've sent. I put down that I was terminated or fired by CP&L, or Metric--it was Metric Constructors--and that doesn't look real good when you're trying to get a job.

Q You are asking this Court to order the company to remove the blacklisting and clear your record?

A Yes, ma'am, I am.

Q Are you asking this Court to award you back wages?

A Yes, ma'am. I am.

Q You are asking this Court to award you attorneys fees and costs?

A Yes, ma'am.

Q And, damages and compensation, especially expenses incurred in travel for having to find these other jobs?

A Yes. I am.

Q Why did you feel like you needed to see this through to the end?

A Well, the main thing is I did it for my family. It's been a real strain, it's put a real mental strain on my wife and our marriage, being away from home all the time and the amount of money it costs keeping up two households, it's just ruined me.

Q Is there anything else you would like to say at this point, Mr. Blackburn?

A No,ma'am.

MS BURNETTE: Please answer any questions Mr. Burdette or the Judge might have.

CROSS EXAMINATION

Q (by Mr. Burdette) Mr. Blackburn, did I understand your testimony to be that on September 4th, you were assigned to this work you told us about? In the containment vessel?

A Yes, sir.

Q You did not report to that assignment because you did not have clothing with you. Is that what you said?

A Right.

Q Had you had this clothing with you, would you have gone to work that day?

A Well, those people that were supposed to go in didn't go in that day anyway, it was like, two or three days later.

Q So, nobody worked in there that day?

A No, sir.

Q You talked about the lead shielding in this area. What lead shielding are you talking about?

A Well, just the lead blankets.

Q What purpose did those have?

A To keep the radiation as low as possible between the and the objects you were working around.

Q You went through the CP&L employee training program?

A Yes, sir.

Q As I recall, you made good grades on those tests you took?

A They're real simple tests.

Q Do you recall the ALARA section of that test having any implementations of the ALARA program?

A Yes, I do.

Q What are some of the ways the radiation was controlled?

A Time, distance and shielding.

Q Those are all inter related. Right?

A Right.

Q If the shielding was not in place, there were other ways to control the radiation. Is that not correct?

A I think so.

Q Pardon me?

A I think so.

Q You think so. Do you recall at the time you were being assigned this work, that as a part of the ALARA program at CP&L , what was the practice at CP&L in terms of controlling employee exposure, as far as crews were concerned, and the rotation of crews in and out of the building? Do you remember?

A Well, if one crew was getting too much exposure, they'd rotate them.

Q Was that the case for the employees within the crew?

A Normally.

Q Was that the reason that you were assigned to go in with this crew?

A No, it's not. The crew I was working on when I first went there worked outside on the turbinedeck and I was doing a modification on the turbine deck and I knew a lot about it. So, the crew I worked in when I first went there, they put those people in the dome. The crew they rotated me with was the crew I ended up with, which I had a lower exposure than they did.

Q Getting back to your concerns on September 4th or 5th, what kind of radiation protection were you afforded inside that containment vessel? Did you put on protective clothing?

A Right. PC's.

Q Were there implements or instruments on your clothing to measure the amount of radiation constantly that you were being exposed to?

A Right.

Q Why don't you describe that for the Judge?

A They were thermoluminescent dosimeters, which it was a little clip, and there was a pocket dosimeter, which you checked, yourself.

Q Were there Health Physics people inside there, with you?

A Occasionally, there were.

Q Did you have a patch on your back which indicated the amount of radiation dosage that you could be exposed to?

A Right.

Q Were you constantly cautioned and instructed to read your dosimeter?

A Yes, when you were in a high rad area.

Q You had the power at any time, to constantly survey your amount of radiation you were being exposed to?

A Right.

Q You knew the limit of radiation you could be exposed to?

A Right.

Q As far as those limits are concerned, in the course that you took, were you advised that the employee limits that CP&L permitted were less than those established by the Nuclear Regulatory Commission?

A Right.

Q They were less?

A Yes, sir.

Q Was it not also true that CP&L went below that by using a buffer even on those limits?

A Yes, sir.

Q Were you provided with an extensive map of the radiation amounts in the work areas to which you were assigned?

A There was a room you could go into to check them. That's true.

Q Did that map not have the radiation amounts on it?

A Which map are you talking about?

Q With the radiation work permit?

A I never got on the radiation work permit.

Q Was there not a radiation work permit issued for the work you were assigned to?

A I never got inside to sign one.

Q Wasn't that permit available for you to observe or review?

A Right.

Q Did you do that?

A I didn't get inside to see it.

Q Did you review the radiation work permit for the job to which you were assigned which you refused to perform? Did you look at that?

A I looked at some permits.

Q Did you look at the one for the job to which you were assigned?

A I was never told which specific one I would be on. There was millions--there was a whole board of work permits on there. The foreman never told me what I was going to do. He told the men on the outside what the job would probably be.

Q Is it not true that this workbook makes it mandantory that you do that? When you are assigned to a job, does this book not require you to review that radiation work permit?

A That's for yourown personal benefit.

Q It is yor yourown safety and for yourown information. It is part of the ALARA program, is it not?

A Right, well--

Q You are supposed to know where the various radiation levels are in the job area you are working in so you can stay

away from them. Is that not true?

A Well, that's--

Q Time, distance and shielding?

A Right.

Q That is part of your responsibility?

A Right.

Q On September 5th, you told them that you were not going to go in and perform the work you had been assigned because of your fear for your safety. Is that correct?

A RIght.

Q What did you do to try to determine whether those fears were justified?

A I went up there and looked at some of the surveys in there and I knew that the shielding being taken out would normally--anybody with any common sense would know that it would be higher radiation levels through the whole area in the containment vessel, so I gazed at some of them. I had no idea which one I would be on, but I looked at some of them which we all did.

Q Are you saying that Metric was assigning you to a job that was going to require you to expose yourself to radiation doses beyond those that were permitted the CP&L requirements?

A No, sir.

Q That's not your contention?

A No, sir.

Q What is your contention? What was your concern?

A That they were going to put us the an area. They wanted the job done. They didn't care how it was done. They didn't care how it affected a person radiation-wise. It was detrimental to the plant operation to get it done.

Q Who told you that?

A Who told me that?

Q Where did you get this perception that you just recited?

A Well, you could hear it from anybody outside.

Q Anybody, you heard it from anybody outside?

A The crew, the men.

Q Did you try to confirm that with any of the Health Physicis people from CP&L?

A No, I didn't.

Q Did you talk with Mr. Slatton about that?

A No, I didn't. I never saw Mr. Slatton.

Q He is the Project Manager. Correct?

A As we work out there, we are told to go through a chain of supervision. You don't just jump to the head man. You start from the bottom.

Q What violation of safety practices or information and material that you learned in your course you took, what did Metric or CP&L do to make your job unsafe? What is it

that you say justified you to say, "I'm not going to do that work," because that is what you did? Correct?

A I never said I wouldn't do the work.

Q You did say, "I'm not going to perform this job that I have been assigned to do today," did you not?

A I never said that.

Q I'm sorry. What did you do? What did you say?

A I told them I didn't mind performing the job, but without the shielding and other safety precautions, I didn't think it was safe to do it, and I still stand by it.

Q The shielding and other safety precautions, all right. Mr. Blackburn, I am going to hand you what has been marked as Respondent's Exhibit No. 12. Could you tell me what this is, please, sir?

A Okay. This is an ALARA Concern.

Q What are ALARA Concerns and what was this one's purpose?

A It was things -- Barry Robinson was the man over ALARA and he would go into the reactor building and survey different areas and tell you, "Be on the look out for contamination or hot spots," certain things like that.

Q Did you have weekly meetings, gang box meetings, at which these matters were discussed, which you attended?

A Yes, sir.

Q That one is for August of 1984. Is there a section

on that ALARA Concerns report entitled, Shielding?

A Right.

Q What does that say?

A During the next several weeks, much of the shielding would be coming down out of the CB. All shielding must be down prior to primary Hydro, September 5th. Be aware of dose rate increases in your work area. Do not loiter near areas which used to be shielded, such as RX Drain Tank and the let down line north of the skid bank.

Q Is it not true then, that in August of 1984, you knew at these gang box meetings, because of the hydrostatic testing,they were taking the temp-rary shielding blankets out of there? Is that not what this says?

A This was not a gang box meeting of anything I've ever read. Ours mostly said,it would have like, hard hats, safety glasses, safety hazards on the job. This here, I've never seen it.

Q Are you telling me that at no time during a gang box meeting was there any mention of a hydrostatic testing program inside the containment vessel and that the temporary blankets would be coming out?

A I wasn't told. The only thing I read was the day before I was fired, was that we're taking a lot of shielding out of the reactor building and such.

Q Did you know Mr. Barry Robinson?

A I didn't know him personally.

Q But, he was there, on the job?

A Right.

Q When you saw the shielding coming out of there, could you have gone and talked to him about it?

A Well, I don't think it was any of my business, at that time.

Q You did not think it was your business?

A I think it was the foreman's business.

Q If I heard your answers to your attorney's questions correctly, you said you looked over in a field and saw this laying out there and you got real upset about it. Is that not what you said?

A I did say there was a lot of shielding out there, but seeing shielding out there and I'm working on the outside doing a job, it doesn't affect me.

Q When they assigned you inside, it is your contention that it did affect you. Right?

A That's true.

Q But yet, you did not ask anybody?

A I didn't ask Barry Robertson. Like I said, we go through a chain of command on the job. That was his business to ask Barry Robertson or any supervisor. I was just a laborer.

Q You were an electrician. Correct?

A I'm an electrician.

Q You are an electrician, and not a laborer?

A Right.

Q That is a skilled trade, is it not?

A That's right.

Q You said that the shielding was a problem and that is why you decided that the job was not safe, because the shielding was gone. Then, you made a general statement that also, there were other safety violations. What were those?

A Other safety?

Q Yes, sir. I asked you to tell me why you refused to perform the work that was assigned to you on September fifth. You said the shielding was gone, and other concerns, other safety problems?

A Well, poor housekeeping was another thing.

Q Poor housekeeping?

A Right. If you never went inside, it would be hard for you to know. It was dangerous, really dangerous, I think.

Q Did you talk to anyone about the poor housekeeping dangers?

A We always brought it up there in the safety meetings, anything we encountered--an open hole inside the floor, or water standing--we always told our supervisor and it was up to him to carry it out from there.

Q These concerns had nothing to do with radiation

exposure. Right?

A Well--

Q The radiation exposure problem was the shielding?

A Right.

Q What does ALARA stand for?

A As Low As Reasonably Achievable.

Q Is it not true that there are three things that affect exposure?

A Right.

Q What are they, again, please?

A Time, distance and shielding.

Q So, if the shielding is not there, there are other ways to control the exposure. Is that not true?

A Well, maybe.

Q Mr. Blackburn, if you had reported for work that day, you had methods for determining the amount of radiation dosage that you were exposed to, is that not correct?

A Right.

Q Was there any requirement or instruction by anyone that you were to exceed those limits?

A No, nobody told us that.

Q I think you said Metric fired you or terminated you on September 5th. Is that correct?

A Right, that's correct.

Q At 10:00 in the morning on September 5th?

A Right.

Q On September 12th, then, you telephoned the Nuclear Regulatory Commission and made some complaint to them. Is that Correct?

A Yes, I did.

Q Why did you wait a week to do that?

A Why did I wait a week? I didn't know which way to turn. I wanted to let somebody know. As I was Shuffled off the job, I didn't have a chance to talk to the NRC official on the job. So, later on, I thought about calling the Nuclear Regulatory Commission, but that was a last thought. I was going to use that as the last thing to do.

Q What were some of the first things to do?

A Well, see, I'm not a person to stur up trouble. I only do things that I think are right.

Q Would it have been right to talk to CP&L or Metric about this?

A Well, I couldn't get back on the job.

Q Before you left the job, would it have been right then?

A I told you before, I was hustled off that job so fast it was like I had committed a crime, really. I had no time to talk to anybody.

Q Did you telephone after that?

A I tried calling. I went to the Safety Proctor's

Assistant. She called. I read my pink slip. It said, "Not to be rehired by CP&L on this project," and I told her I would like to talk with the SAfety Proctor, and his name was Rick Lhemus, and I told him, what was the deal on this not being able to come back, and he said, "Boy, can't you understand? You're being fired." He said,"You're fired for insubordination and can't be hired on the job again." He was very arrogant to me.

Q He was a CP&L proctor?

A No, sir. He was a Metric.

Q Mr. Blackburn, are you familiar with the NRC Form Three, Notice to Employees?

A Right off the top of my head, I'm not. I might be.

Q Let me show you a copy of it. This is Respondent's Exhibit No. 1, page 76, what does it say on page 76 of this NRC Form Three?

A CP&L is required to post Form NRC Three in the plant where people work in or use any portion of the restricted area. It shows a map with the NRC offices, their addresses and telephone numbers. Here are some places where NRC Form Three are posted, the bulletin board at the back badge rack area.

Q Did you ever go near that bulletin board in the badge rack area? Did you have a badge?

A Yes, I did.

Q Where else?

A On the bulletin board where hard hats are stored.

Q Did you have a hard hat?

A Oh, yes.

Q You would have gone near that?

A I carried my hard hat home with me.

Q Where else?

A Bulletin board in hallway just outside auxiliary building.

Q Would you have gone down that hallway?

A Occasionally.

Q Where else?

A On bulletin boards in Administrative Building.

Q Now, would you turn the page? Notice to Employees, does that form look familiar to you?

A I've seen that.

Q Doesn't that form tell you where there are a number of offices of the NRC with telephone numbers?

A Right.

Q Would you read to me from that where it says Employee Protection?

A Okay. It says, if an employee believes that discrimination has occurred, due to engaging in protected activity, said employee may, within 30 days of discriminary act, file a complaint with the Department of Labor, Employment

Standards Administrative, Wage and Hour Division. The Department of Labor shall conduct an investigation where discrimination has occurred, issue an order providing relief for the employee. If relief is not provided by other means, a settlement.

Q That says the Department of Labor, Wage and Hour Division. Did you do that?

A Wage and Hour?

Q United States Department of Labor, Wage and Hour Division?

A Right.

Q I thought you responded to your Counsel that you went to the State Of South Carolina Department of Labor?

A Yes, the Department of Labor. It says Department of Labor. It doesn't say which one I had to see.

Q It says Department of Labor, Wage and Hour Division.

A Well, they're all tied together. I put my trust in the Department of Labor and where it's determined from there, I have no control over. I filed it within my legal time. I have papers and documents to justify it, too.

Q I am going to show you your Exhibit No. 3. What does this carbon copy show?

A US Department of Labor, OSHA

Q Did you see that?

A Yes, I see it.

Q That is not the wage and hour division, is it? When you saw that, didn't it ring any bells for you or cause you any concern?

A No, it didn't.

Q I am going to hand you the letter from James Rowe, your Exhibit No. 8--I'm sorry. It is the letter from the US Department of Labor, October 11, 1984, Exhibit No. 5, what does that say?

A It says US Department of Labor, OSHA.

Q Did you see that?

A Yes, I saw it.

Q That was no problem?

A No, it wasn't.

Q Mr. Blackburn, you mentioned that you were working outside. What did your work consist of?

A We done temporary power on the plant, lighting, telephone communication.

Q The work you were assigned to do on September 5th, how would you classify that work in terms of the working conditions, other than with radiation?

A Simple. The job would have probably been simple.

Q Is it hot in there?

A They had air condition units in there, sure, but you're still pouring sweat. You're still hot.

Q You had to wear this clothing?

A Right, yes, sir.

Q Did that have anything to do with your decision?

A OH, no. That clothing is something you got used to.

Q When you compare that work to the work outside, would you say that the work in that vessel or containment structure that you were supposed to perform on September 5th, would that be less pleasant work than working outside as an electrician?

A If you'll remember July was just as hot as August and September to me on the inside, as I remember it.

Q So, that did not have anything to do with it?

A No, sir.

Q It was the shielding?

A Right, the whole ball game, the shielding.

Q Is it your testimony that you told Mr. Young about this? You explained to Mr. Young your concerns?

A I did. I did tell him my concerns for the job. It was his concern and he didn't really want me to go in there to start with, but it was a job that had to be done and somebody had to do it.

Q You mentioned that the NRC ordered radiation dosage limits?

A Right.

Q They saw that the limits were less than that. CP&L had limits less than that and then, there was a buffer that

CP&L uses?

A Right.

Q On September 5th, what radiation dosage had you accumulated for that quarter?

A I don't think I had any for that quarter. I worked in different parts around the reactor building, which you're going to pick up small amounts of radiation dosage.

Q I think you mentioned that 1250 millirems was the NRC limit?

A Right, as I remember it.

Q So theorectically then, it is true that you could have safely been exposed to radiation dosage for the balance of that quarter to up to 1250 millirems?

A True.

Q That is what you learned in that course. Right?

A True, right.

Q Is it your contention that your work on September 5, 1984, in that containment vessel without the shielding would have exposed you to that much or more?

A No, it's not. It wouldn't have, because I would never have gone in there.

Q Tell me again why the job to which you were assigned which you refused to performed was unsafe. What was unsafe about it?

A I think the main thing was the principle behind it.

That was number one.

Q What principle is that?

A Well, CP&L or Metric didn't recognize my side of the safety. They saw their side of the safety and that was all.

Q Their side of the safety and NRC's side of the safety was that when you accepted this employment to work in a radiation or nuclear facility, you would be exposed to some radiation. Is that not correct?

A That's true.

Q They established limits to that radiation that are determined to be safe limits. Isn't that right?

A I would say so, safe limits.

Q You have indicated that you would not have been exposed to anywhere near those safe limits. Is that correct?

A Right.

Q But, you determined yourself, that it was not safe. Is that right?

A Well, as I told you, by reading the surveys, just taking a visual look around the room at the surveys and talking with people that had been in there and come out that knew exactly what was going on in there. I mean, you can't sit outside and--

Q Well, let me ask you this: Did you decide on September 5th that being exposed to any radiation was something you just did not want to do?

A No, sir. It wasn't.

Q What limit of radiation would you have accepted on that day?

A I wouldn't have complained about any. If I would have went in there and picked up a nice dose, I wouldn't have complained, as long as it would have been safe, as long as I know I would have gotten the least amount I could have got.

Q Where does it establish what would have been unsafe?

A Well, if you look in that book, it says acute. What we were going to do would have been an acute dose of radiation. You would have got a large amount in a real fast time, which is not good for you by any means. I know--I have taken acute amounts in other jobs.

Q But, not the Metric job?

A Not the Metric job.

Q Before Metric?

A No.

Q After Metric?

A Right.

Q Have you worked in radiation facilities after Metric?

A I have. I wasn't scared of it. There was no need to be scared of it.

Q Can you tell me where you would have been subjected to those acute amounts of radiation?

A Surrey, Virginia

Q I mean on this job on September 5th.

A Any locked high radiation area in that facility.

MR. BURDETTE: No further questions.

JUDGE VONBRAND: Redirect?

REDIRECT EXAMINATION

Q (by Ms Burnette) I believe when Counsel for the Respondent asked you a series of questions, you responded that you would have gone in and accepted what was necessary. Is that right?

A Right.

Q Is this related to your ALARA training?

A Right.

Q That is as low as reasonably necessary. Did you feel that the shielding could have prevented you from receiving a certain amount of radiation?

A It could have prevented anybody, not just me, but anybody.

Q Was it your feeling that it was not necessary at that time to take that much radiation, if the shielding had been up?

A Right.

Q That was your concern?

A Yes. It's true.

Q Did you believe that it was going to be unsafe that

day to work in that area?

A Right.

MS BURNETTE: Thank you.

JUDGE VONBRAND: Recross?

MR. BURDETTE: None.

JUDGE VONBRAND: You are excused.

(The witness was excused).

JUDGE VONBRAND: Off the record.

(A brief discussion was held).

JUDGE VONBRAND: On the record. Claimant has offerred the affidavit of his Counsel concerning attorney fees, as Claimant's Exhibit No. 11. I understand that there is no objection. This document is received.

(The document above-referred to, was marked for identification as Claimant's Exhibit no. 11, and received).

JUDGE VONBRAND: Mr. Burdette, you may proceed.

MR. BURDETTE: The company calls Mr. Floyd Slatton.

Whereupon,

FLOYD SLATTON

was called as a witness by and on behalf of Counsel for the Respondent and, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Burdette) Please state your full name.

A Floyd Slatton.

Q What is your address, sir?

A 114 Florida Drive, Darlington, South Carolina.

Q By whom are you employed?

A Metric Constructors, Inc.

Q In what capacity?

A I'm the Project Manager at the H.P. Robinson Plant at Hartsville, South Carolina.

Q How long have you been employed in that capacity?

A Since June of '84.

Q Are you presently employed there?

A Yes, I am.

Q As Project Manager?

A Yes, sir.

Q Can you explain the relationship between Metric and Carolina Power and Light at the H.P. Robinson Plant?

A Yes, sir. We are an independent contractor hired to do service work for CP&L at Robinson. In our contract, we have to follow all regulations, procedures and rules of CP&L at the plant while we are doing the work for them.

Q What kind of work does Metric do for CP&L at the Robinson Plant?

A Well, all phases of construction work. We have electrical, mechanical and civil work, to replace three steam generators, electrical mod work, piping and now, since that steam generator is replaced, we're doing mod work. We're

doing civil support for this mod work, as of now.

Q You mentioned that Metric is obligated to comply with CP&L's various plant practices. Is there any requirement or practice with regard to the employment of personnel by Metric?

A Yes, there is. We have very strengent requirements for the employees. We have to do a background search on them, a five year criminal credit. It's required by the NRC and CP&L also has theirown procedure for nonlicensee personnel at their working nuclear plants.

Q What is Metric's attitude toward the personnel once they have gone through all this? Are they deemed highly expendable?

A No, on the contrary. I have a rough time getting people because I have a lot of people who can pass the requirements to work at this plant.

Q What is the practice with respect to the ALARA program in assigning personnel to work crews?

A I have so many people. I can get so many people in at one time to work, so I have to rotate the people so that I don't--the terminology is--burn them out, so I can get the work done that I have to do, for CP&L. I have to rotate these people so that they do not pick up too much radiation, which by law can only be so much. So, we rotate these people so that they do not pick up more than the dose they

are allowed to pick up.

Q If an employee gets out of balance in terms of radiation exposure in a crew, do you rotate him out and bring in somebody else with less radiation exposure?

A Yes, we do.

Q Do you try to keep the people in the crews balanced?

A Yes, sir. We do. I get a computer read out every day of all our employees, so that I know where they're at in relation to the amount of dose they have, so that I can keep the crews functioning to get the work done on a timely basis.

Q Why don't you tell us a little bit about what the instructions are with regard to Metric's practices on the job in terms of employees' safety or complaints of hazardous working conditions?

A We tell the people when they come in, and they're taught in the school, too, that they're responsible for their safety. Each person who is employed by Metric is a Safety Person as far as Metric is concerned. We stress this all the time, that they're the main person responsible for their safety. We have our superintendents and we ask them to go through the chain of command.

If a person tells his foreman and doesn't get any action, he has a right to go to his superintendent and if the superintendent doesn't do anything about it, then, my door is always open. They can come in and see me.

Q Did Mr. Blackburn talk to you about this safety concern?

A No, he didn't.

Q Did other employees in August and September of 1984 complain about safety concerns?

A I can't say it was August or September, but we did have quite a few people that came in and talked to us about safety concerns, radiation, and also the other safety factors. We have had several people who have had safety concerns and we have addressed those as they have come up.

Q On September 5, 1984, the date that Mr. Blackburn was terminated, were there other employees on that date who were terminated because of work assignments?

A No, there were not.

Q Mr. Blackburn testified that he had been blacklisted. Did Metric blacklist Mr. Blackburn?

A I think on his termination report, we said that he couldn't be rehired at this site.

Q Why did you put that on there?

A Well, I would not bring a man back to this site that refused to go inside. As he said, he refused to go in there and he refused a job assignment. I just would not bring him back on the same job.

Q Why was Mr. Blackburn terminated?

A He refused a job assignment.

Q Was Mr. Blackburn's termination because of any fear that Metric had that he would report Metric to the NRC or some other regulatory agency?

A None, whatsoever. That wasn't the reason I terminated him. He was terminated. I'm the final arbitor. I signed it and he was terminated for refusing a job assignment he was assigned to do.

Q Would that have been true of any other employee?

A Yes, sir.

MR. BURDETTE: I have no other questions.

JUDGE VONBRAND: Cross Examine.

CROSS EXAMINATION

Q (by Ms Burnette) Mr. Slatton, how many times have you talked to Mr. Blackburn?

A Very few times.

Q Did you talk to him at all on September fourth?

A No, I did not.

Q Did you talk to him at all on September fifth?

A Not that I can remember, either day.

Q You were not there when he brought his concerns to Bobby Young, were you?

A I was on the jobsite, yes, ma'am.

Q Did you hear him tel anything to Bobby Young?

A No, ma'am.

Q You did not hear that conversation?

A No, ma'am.

Q Did you ever meet with Mr. Blackburn that day?

A No, ma'am. I didn't.

Q He did not actually have a chance to give you his reasons, did he?

A I didn't talk to him that day for whatever reasons. I don't know what the reason was.

Q You were just relying on what somebody told you he wanted or he said. Is that correct?

A Yes, ma'am.

Q You stated that you have an open door policy, but that the employee should first go to the foreman, and then, up the chain of command. If he does not get results from the foreman, he can go to the superintendent and then, to you. Correct?

A Yes, ma'am.

Q Mr. Blackburn came to work about 8:30 that morning?

A I don't know.

Q He reported to work at 8:30 and he was told at about 9:00 or 9:15 that he was going to be fired?

A Well, we start at 7:00. The reason I said I don't know is because our shift starts at 7:00.

Q Assuming he was there on this particular assignment at 8:30, then was told at 9:00 he was going to be fired, he didn't have much time to take his concerns up the ladder,

did he? If he wanted to go to the superintendent or you?

A I don't understand the question.

Q He did not have much time to go up the chain of command in a half an hour, did he?

A Yes, he was talking to his foreman, wasn't he?

Q You heard his testimony that his foreman was going to let him think about it until 9:00 and then, his foreman was going to talk to him again, so he was expecting to talk to his foreman again, wasn't he?

A I'm not sure I follow.

Q You heard his testimony, did you not?

A Yes, ma'am.

Q At the 9:00 break, his foreman was going to talk to him again . Bobby Young was going to talk to him again and find out whether he wanted to go and do this job?

A I understood him to say that Bobby told him he would like to know at break time what his decision was, yes, ma'am.

Q Break was at 9:00?

A Yes ma'am.

Q To your knowledge, did Bobby Young or you try to check out any of Mr. Blackburn's concerns by going to the figures or to the maps or anything between 8:30 and 9:00, before he was told he was fired?

A When I got his termination slip would have been

probably right when he was terminated and there was nothing said by anybody about a safety concern on this incident.

Q You do not know whether he brought that up or not, do you?

A That's right. Personally, I do not know.

Q It could have brought it up with Bobby Young?

A Yes, ma'am.

Q You were not there?

A No, ma'am.

MS BURNETTE: No further questions.

JUDGE VONBRAND: Redirect?

REDIRECT EXAMINATION

Q (by Mr. Burdette) Mr. Blackburn in conjunction with the contention about blacklisting, also said that he could not go to the NRC Office on September 5th because they took his clearances away from him. Is that true?

A No, because the NRC OFfice is not inside where you need a clearance to get to it. Any person in this room could go up there right now and walk into the NRC's office. He could go through--if he lived in that area, he could go up to the guard shack and say, "I would like to see the Resident NRC Inspector on this job," and they would take him right into the office.

Q There is a Resident NRC Inspector there?

A Yes, sir.

Q Anybody can go and see him?

A Yes, sir. Anybody can see him at any time.

Q So, rather than calling him on September 12th, he could have walked right in the office?

A Yes, sir. Even after he had been terminated from the site.

Q It requires no clearances to go into that office?

A Well, yes, you would have to go to the guard shack and tell them that you wanted to see the NRC Inspector and you would be allowed to see the Inspector.

Q Metric could not take away his right to do that?

A No, sir.

Q CP&L Could not take away his right to do that?

A CP&L would not. No, sir.

Q Mr. Slatton, do you view employee health and safety as a very important concern of yours?

A It is one of our most important things that we look at. It's one of our most important things. We have a safety program second to none. I have a safety inspector on the job at all times. That's a prerequisite on most of our jobs. We have a man who is in the field at all times. We have safety programs. We have safety contests. We have one going on right now. It's one of our most important aspects of our job.

Q Has Metric ever been cited, during your period of

time in your job, by the Nuclear Regulatory Commission or anyone else for violations of employee safety?

A No, sir. Not that I know of.

MR. BURDETTE: Thank you.

JUDGE VONBRAND: Recross?

RECROSS EXAMINATION

Q (by Ms Burnette) Mr. Slatton, is it not true that Mr. Blackburn had to have security clearance for most everywhere he went while he was one his job?

A No, just in the vital areas, just in the protected areas.

Q Did he not work in that area a good bit of the time?

A Yes, ma'am.

Q Do you think he could have had a reasonable belief that he needed security clearance in order to see the NRC representative? Would it be unreasonable to assume that?

A I think that would be an assumption on my part. I can't answer that. I don't know. All of our training and all of the NRC rules are such that people have rights and they are apprised of these rights and there's no way that we can, under penalties of law, stop them from seeing the NRC Resident or any safety. We have an open door clear to our President on safety. If he or she doesn't get satisfaction, the employee can go clear to, can call our President and the President would be down there that day.

Q He did go to the NRC later. You heard that from his testimony?

A Yes, ma'am. He said he did.

Q When you fire an employee or terminate an employee, do you expect them to leave the premises immediately?

A Yes, unless he wants to see somebody like that, unless he wants to see me. If he wants to see me, they can come see me before they're terminated.

Q Generally, you are ready to get them off the property, are you not?

A Yes, yes.

MS DURNETTE: Thank you.

JUDGE VONBRAND: If there is nothing further, you are excused.

(The witness was excused).

JUDGE VONBRAND: Do you have another witness, Mr. Burdette?

MR. BURDETTE: Yes, Your Honor. Mr. Bruce Meyer.

Whereupon,

BRUCE MEYER

was called as a witness by and on behalf of Counsel for the Respondent and, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Durdette) Please state your name.

A Bruce Meyer.

Q Where do you live?

A My residence is in Cary, North Carolina. I am a Health Physicist for Carolina Power and Light. Health Physicist is a fancy term for basically, a specialized industrial engineer or specialist, primarily dealing with radiation and radiation protection matters.

Q What is your official title with Carolina Power and Light?

A I'm the principle Health Physics specialist. I'm responsible for supervising the health physics support unit in the corporate offices.

Q What is your educational background?

A I have a batchelor of science degree in nuclear engineering from Purdue University with a minor in Health Physics. I graduated in '77.

Q Since 1977, what kind of employment have you had?

A Primarily in the nuclear power industry. I worked for Commonwealth Eddison in the northern third of Illinois for three years. Two of those years were at a nuclear power plant, design nuclear generating station. After that, I worked for about a year and a half for the State of Illinois, the Department of Nuclear Safety, as an Inspector for the state in nuclear matters. For the last four and a half years, I have worked for Carolina Power and Light as a

Health Physicist in radiation protection.

Q Chronologically, in September of 1984, what responsibility or what involement did you have with the H.P. Robinson Plant in regard to radiation safety?

A I'm going to back up for a moment, if I may. Prior to that time, working in the corporate Health Physics support unit, my responsibilities were for the licensing for the up coming steam generator repair project, the planning, the coordinating, the radiation protection program, how many people would be involved to provide health physics support, what type of ALARA measures, if you will, shielding, planning, special tools, deconning and what have you that could be used to minimize the radiation exposure during the steam generator repair project.

I did that activity for approximately a year and a half. I actually worked on a submittal to the NRC called the Steam Generator Repair Report, where we in depth, went through exactly what we were going to do, how we were going to do it and what measures we were going to take to minimize the exposure.

I spent time at two other utilities to observe this major modification that they had performed, prior to CP&L, the steam generator replacement project.

Six months prior to the actual outage, I was transfered to the Robinson Plant, and spent the next six or seven months

preparing for the actual outage, receiving equipment, writing procedures, ordering shielding and what have you. When the outage started, I was one of two radiation control supervisors at the site.

My primary responsibilities were job coverage, that is providing health physics technician coverage of workers in high radiation and locked high radiation areas, conducting and making sure that the routine surveilance of radiation in contamination areas was conducted according to procedure and according to the regulations, doing special surveys during high radiation jobs, areas that have higher radiation jobs in them.

All areas are categorized by the different levels of radiation and contamination and the higher the level, it requires special permits, special needs, special preparation.

Also, preparing the radiation work permits, which is the permit that conveys the information that we receive in our routine and special surveilance to the worker. It states the radiation levels and it also states protective clothing requirements.

Q The radiation work permit is a survey of the radiation exposure which may exits in the work environment. Would you explain that?

A Okay, a radiation work permit is required for all individuals to enter a radiation control area. At Robinson,

the radiation control area is an area where all the radioactive material for the most part, is contained or encompassed.

Q Is that the area Mr. Blackb.rn was assigned to work in on September 5th? The containment building is a radiation area?

A Yes, it is. It is actually posted as a locked high radiation area. That means you have positive access control because of the higher levels of radiation in that building.

I was saying about the RWP, all entries into the radiation control area require an RWP and it is a matter of not only a good radiation protection package, but is it also required by the insurance company. It is something that you need to tell the worker because they are ultimately responsible for theirown radiation exposure, safety and what have you.

You need to convey what the radiation levels are and what the protective clothing requirements are in the jobsite they are going to be working in.

Q I am going to show you what has been marked as Respondent's Exhibit No. 4, and I wonder if you could tell me if that is what you are talking about?

A This is a routine surveilance report of the containment vessel, or reactor building, or the dome. All three of these are synonomous. They all mean the same thing.

JUDGE VONBRAND: What is the dome? I think that is the site we are concerned about.

THE WITNESS: Right, the dome, the reactor building and the containment structure are all the same structure. It is what most people recognize when they say, "There is a nuclear power plant." It is a large concrete and steel structure that contains most of the radioactive material, the contaminated systems and the nuclear systems, for the most part. It is designed primarily for during operations, to provide fueling to the outside world and during postulated emergency conditions, to contain whatever release of radioactive materials from the pipes or what have you. So, it is the largest structure on the site, for the most part.

Q (by Mr. Burdette) Are the radiation levels within that structure measured?

A Daily, we do a surveilance when we're actually working in the Containment, during outages, of every floor and most of the cubicles within the containment vessel.

Q What is the purpose of that?

A Well, there are two purposes. It tells us, the Health Physicists, the Specialists, it categorizes the room or what have you, tells you what the contamination levels are, it tells you what the radiation levels are, and based on that, you prescribe the proper dosimetry, the proper protective clothing and the proper job coverage. Job coverage is when

you send a trained technician to go along with the work crew or the individuals to assist them in performing their work.

Q For the workers' safety?

A Yes, sir.

Q On September 5, 1984, was there a detailed survey and measurement made on the area in which Mr. Blackburn was assigned to work?

A Yes, there was. The whole containment structure was surveyed, like I said, daily during this evoluation of the outage. From February through December, I think,we did a daily survey of the containment structure to identify areas that might have changed, due to turning on pumps or what have you, to determine the activity.

This survey record was then, reviewed by the foreman, the first line supervisor, for trends in radiation exposure and to help fill out the radiation work permit.

It was also reviewed by myself, with the other RC supervisor, and then, it was posted with the other radiation work permits right outside the entrance to the radiation control area.

Q Can you explain the shielding and how it was involved with regard to the work being performed on September 5th, with regard to the hydrostats?

A Shielding is just one of the many tools that is used to reduce peoples' exposures. What we use is what Mr. Blackburn

and others have already referred to as ALARA. That is a state of mind, or philosophy. Any ALARA decisions that are made, there is a cost benefit that you have to make in your mind, more or less. It's a subjective type decision a lot of times. You have to minimize the exposure to do useful work. Ultimately, you could have no exposure, but then, you would have no work and that is not ALARA. You have to get something done productive, produce electricity, which is what we are ultimately after.

To do that, you are going to have to expend some exposure. You minimize that and you use the philosophy of ALARA. It is very subjective as to what is reasonably achievable.

But, to address your question about shielding, shielding is just one aspect of that. The shielding that we're talking about with this issue should be called portable shielding. It is a lead blanket, the consistency of steel wool, but it made out of lead. It is stuffed into plastic bags, more or less, and sewed up and it is hung on pipes and it is hung on structures in front of pipes or whatever the source is of the radiation or radioactive material.

There are no federal regulations that require any shielding to be in place, portable shielding. There is only one paragraph that addresses ALARA in the Federal Regulations

when it comes to occupational exposure. This shielding that was used, was used throughout Containment, and some of the shielding had to be removed to safely operate these systems.

The shielding that was placed on the valves, the pumps and the lines had to be removed prior to doing the testing.

The shielding in itself, does not reduce your exposure. Exposure rates in themselves are not a hazard. It's the dose you receive while doing your work and we have a very sophisticated, very elaborate systems set up to meet the already stringent federal limits. So, shielding in itself or the lack of shielding in itself, is not going to necessarily minimize your dose.

Q Without shielding, time becomes important?

A Well, there's time and also, distance. You would use the distance by either using special tools, and time is a very critical aspect.

If I have to get a job done, as an example, and that job takes two hours to do. I may allow a worker to go in and work the whole two hours and pick up "x" dose."

Whereas, if I don't shield, I may have to send in two workers to work half the time and they will actually end up picking up X, plus dose because there's always an unproductive amount of dose associated with doing a job, just walking to the job and walking away from the job. If only one

person has to do that, it's obviously less dose than if two people have to do that. So, the point here, is that shielding is not the only ALARA tool we have and that we use on the jobsite.

Q Had any of the permanent radiation shielding been removed from the dome?

A No, it hadn't.

Q Only the blankets?

A Just the portable shielding which is something that sometimes we use shielding and sometimes, we don't. It's just the nature of the job and what the total exposure is expected to be for the job. Some jobs, it takes twice as much exposure just to put the shielding in place, than it does the job. So, obviously then it is not productive or ALARA to put the shielding in place.

The shielding is heavy and at some places, you don't have a crane or mechanical equipment you can use to put it into place. So, in that situation, you would opt to use other means and limit the time, use special tools, use robots or what have you.

Q Mr. Blackburn testified that his safety concerns centered around the removal of the shielding. Did the removal of the temporary shielding from the dome make the job unsafe?

A No, it did not.

Q Did it expose the workers in that dome to greater than normal radiation doses, as Mr. Blackburn testified?

A Well, here again, normal is relative--relative to what? It turns out that at this stage of the outage, we had been shut down since January. The radiation in the pipes or what have you had decayed for the last seven or eight months.

Even without the shielding, it depends on what you call normal. Normally, we don't put in portable shielding, but we were going to be in there for a year or so, and that's what we did.

Normal in this case depends on what you call normal. Yes, the radiation levels if you took the shielding away would typically be higher.

Let's say they went in general areas from two millirem per hour to four millirem per hour, but that just depends, like I said, on what you would call normal.

Q Let me ask you some questions about dosage and radiation exposure. What does the Nuclear Regulatory Commission provide in terms of standards for employee safety?

A Okay, on this job and for these crews of electrical people, the dose limit would have been 1200 millirem per year and 300 millirem per quarter. A quarter is more or less a calender quarter. It may vary one or two days, depending on how the month ends and how your badge ends. The CP&L limits for the crews Mr. Blackburn was working on were 5000

a year and in this case, I believe it was 2000 a quarter.

Q So, less than half the NRC limit per year?

A Yes.

Q And, about two thirds the amount per quarter?

A That's correct. And, it turns out that we, at Robinson, had a goal to maintain doses to 4000 millirem a year and we achieved that goal, and that was a very notable accomplishment.

Q That was one third of what the NRC provides as a safe level?

A That's correct. For the whole year, no worker got above 4000.

Q That would apply to Mr. Blackburn?

A Yes, it would have.

Q The quarterly limits would have applied to Mr. Blackburn?

A Yes, they did.

Q Those are two thirds of the NRC amounts. Right?

A Right. He was approved to 2000, and then we buffer it another 80 percent-- to 1600, so he was technically approved to go to 1600 millirem for that quarter. For that quarter, as of September fourth, his dose was 866 millirem.

Q And these are the NRC's safe limits?

A Well, the way these limits are, the federal limits in themselves are safe. The limits are based, after the last 50

years of study, primarily from the atom bomb blasts in Japan and the observable effects, you observe those effects and the federal limits are based a couple orders of magnitude below any observable effects. CP&L's limits are below the federal limits, which are already deemed safe by the Government, and then, our administrative control limits are even below the CP&L limits. So, it is buffer upon buffer.

Q Had Mr. Blackburn not refused his job and gone into the dome to work, were there procedures in place there that would have assured that he would not have been given more radiation dosage than your CP&L buffered amounts established?

A Yes, let me walk you through what a typical worker encounters, or myself, as a supervisor, gaining access into the radiation areas. There is a change out area where you remove most of your street clothes. In that area, all the radiation work permits are posted and the surveys associated with those work permits and the routine surveys are posted.

Q What do they show?

A They show the radiation levels, the contamination levels and the air borne radioactive levels for the entire plant and for the specific jobsites a worker has been instructed to go to.

The radiation work permit gives the dosimetry which is either the TLD or the pocket dosimeter which can be read out all the time, constantly. It gives the protective

clothing requirements, the respiratory protection requirements and any other special instructions, whether you will have continuous health physics coverage by CP&L or contract technicians.

Next to that, you have, if you have any questions, you have the RC Foreman's office and the radiation work permit office and the dosimetry office. So, if you have any questions, you are encouraged and it is posted, to contact HP. You call them or contact them. There was a large window where you could go and talk to someone if you have any questions about the survey information or the RWP requirements.

Q Is this a window where you can voice safety concerns?

A Most definitely.

Q About higher than normal radiation exposure?

A Yes. all kinds of concerns.

Q Mr. Blackburn would have had access to that?

A Yes. After you review this information and you remove most of your street clothes, if you're going to an area requiring protective clothing, you then fill out what we call a chit, which is, "I'm signing in on RWP 2528." We number the radiation work permits in sequence.

On the radiation work permit, it states what the recommended allowed dose is and in most containment entries, it w s 150 millirems. For some areas within the pump bays which were considered higher radiation areas or locked

radiation areas, it was 300 millirem.

Q Is that a control in itself?

A That's that entry control dose, so you are not allowed to go above that.

Q You are not allowed to go in there without that much allowance?

A That's correct. You fill out this chit and you walk around to one of six access lanes, where a dosimetry technician is seated. You hand them the chit and call your name up on the computer and they open up and check your record. They look to see what you have been approved to in terms of what your dose is--let's say, 1000--what your available dose is. If you had picked up 500 to that day, you have 500 available and then, they would compare the available dose to what you're asking to go in that RWP. If it says 300, it has to be less than the available dose.

There are even more procedural practices built up because the dosimetry technicians may not have the knowledge compared to the RC Foreman, or what have you, we want more control.

If you have 500 available and you have to have 300 to go in, then they would not accept you to go in. You have to have twice the available than what the RWP calls for for the technician to allow you to go in. If you don't have it, you have to come around to the window and have the RC

Foreman to quiz you and sign the chit to yes indeed, go ahead and let them in. We had a very tight access control program.

After going through all this, you have the dosimetry, you know what the conditions of the job are, you know what the protective clothing requirements are, and you gain access by the computer continuously tracking this, and also, we do it annually.

You change out into your clothing--by the way, when you enter containment, it always requires protective clothing of one sort or another--you get dressed and proceed to the control point of the dome or containment vessel itself, and there, they put a piece of tape on your back, your name, and RWP and the allowed dose.

That tells people like myself, the technicians which we had up to ten technicians in the containment constantly with a minimum of four or five all the time, health physics trained technicians, what the RWP is, and if somebody is standing around and it appears that they are in the wrong RWP, you can see what they have signed in on and if they are loitering, we ask them to please leave. It also tells what their allowable dose is, so when they're working, the technicians will go around periodically and say, "Let me read your dosimeter." They'll read it and if you're getting close to your allowable dose for that entry, say if it's

300 and that person has 280, they'll say, "You're going to have to stop work and go out because you're getting too close to your entry dose." We had a lot of controls in place just to go to the work site itself.

Then, once you get to the work site, in the pump bays, we had continuous HP coverage around the clock because of the high radiation exposure levels compared to other parts of the plant.

Q Mr. Blackburn said that he was not concerned about the quarterly dose limits. He was concerned with something called acute exposure. That is what he said, that he did not work because of acute exposure. Do you know what he is talking about?

A When you talk about radiation exposure and the biological effects, there are really two types of how you receive radiation exposure and it has to do with the time elements.

The acute dose is when you receive the exposure in a short time. Chronic exposure is small amounts over a long period of time.

For the dose limits set by the federal government and the exposure rates within those limits, there is no evidence that says whether you get it chronically or actutely, there will be any different effect on your biologically or later on in life.

Q Does the NRC have a provision established to limit acute radiation exposure?

A Well, the limits are the dose limits. You can not get more than 3000 per quarter for this work crew. It doesn't matter. The NRC Doesn't care whether you get it in one minute, 1000 minutes or a quarter, so there is no time frame limit.

Q Does CP&L have such limits?

A On the books, no they don't, but in fact, we do. The higher the exposure rate, the tighter the controls and we even have areas where the exposure rates are so high that you can only stay for a couple of minutes. We typically do not ask individuals to go into that area. We come up with other means to do that type of work. The area within the pump bays do not fall within those limits.

Althought they are considered as locked high radiation areas, which is any area greater than 1000 millirem in a given hour that you're in there that you could receive, that is not considered an especially hazardous area, which would be 60,000 millirem per hour, so it's way below that number.

Q Was there any way from what you have described here, that Mr. Blackburn could have received a radiation dosage above the limits established by CP&L's quarterly limit?

A Not in the conditions we have looked at, based on Mr. Blackburn's testimony of what jobs he was possibly going in

on. I think there is one piece of evidence, and I don't have the number of the document, that addresses this.

Q Did you have occasion to review the crews that worked in the dome on September 5th?

A Yes, what we looked at was--let me see.

Q I will hand you Respondent's Exhibit No. 8.

A Yes, I prepared this document based on the dosimetry records and the computer system and those records within our records vault. These are the two crews that Mr. Slatton gave to me who were working in the radiation control area for this period of time, the end of August to the first week in September. What I did was looked at these names and what doses these people picked up on September 4th and 5th.

The highest dose anyone picked up was 75 millirem. That was for maybe up to ten entries for those two days period of time.

Q 75 millirems compared to 1600 millirems for the quarter. Is that right?

A Yes, that's correct. And that's typical if you're workin in the pump bays for any length of time. 75 is a typical number. This individual is probably approved to go to 150. But, there were four individuals working in those crews those two days and their doses range from 25 to 75 millirem . I also have their quarterly dose on here, and their yearly dose. The highest quarterly dose was 1693. The

highest yearly dose was 3409, both by individuals other than the four who went in on those two days.

Q The four who went in on those two days, one of those people who went in should have been Mr. Blackburn?

A Yes, I presume. The reason I believe that Mr. Blackburn was asked to go in--and we don't know for a fact which job he was asked to go in on--during that stage of the outage, we had completed the steam generator replacement project for the most part. We had rewelded everything back together, reinsulated most of it and we had to do a hydrostatic or hydrotest of it.

What you do is fill it up with water, turn on the pumps and see if it leaks, bring it up in pressure and temperature.

To do that, you have to, for one thing, remove all the shielding on the piping. That is even a greater safety concern because they're not designed to operate with lead hanging on them.

The outage logs show for those days, there were two modifications. They needed some electrical work crews to continue this filling of the reactor cooling system to perform this hydrotesting.

The two IWP's for that--and they have been entered as exhibits--were 2548 and 2691. So, I used that information to determine what individuals went in from the electrical crews

to work on those jobs for those days, and that's how I arrived at the doses for those two days.

Q Do contract workers such as those for Metric have access to CP&L health physics personnel?

A Most definitely. Like I said, there are technicians in the field who are there, and that's why they are provided. Technicians are provided as continuous coverage people to direct workers and to answer their questions in the field with specific situations on their jobs.

Q So, an electrician such as Mr. Blackburn could have talked to you or someone like you about his job?

A He could have talked to the technician on the job. He could have talked to the foreman prior to entry or at any other time. He could have talked to myself or the other RC Supervisor. On several occasions, Floyd himself, asked me to talk to some of his workers who had for whatever reasons, some concern about radiation exposure, whether it be exposure, contamination or what have you. That is something that we encourage people to talk about. A lot of people have a lot of misunderstandings and misgivings about exposure and contamination and radiation and that is what I'm trying to do, to understand the physics behind this and to explain to people what it's all about.

Q You heard Mr. Blackburn say that his clearances had been lifted and that he could not talk with the NRC. Do you

agree with that statement?

A No, I do not. The NRC Office is outside of the security area, the protected area. Anyone can gain access to the NRC simply by going to the front guard house and saying,"I'm a resident or a former employee, or I'm an employee and I would like to talk to the NRC." They would probably call the NRC first and say, "There's an individual here to talk to you." So, if his contention was that his TDL and security badges were pulled because he was terminated, that should not have precluded him from talking to the NRC. It is against the law for us to prevent anyone from talking with the NRC.

MR. BURDETTE: Nothing further.

JUDGE VONBRAND: Cross Examine?

CROSS EXAMINATION

Q (by Ms Burnette) Mr. Meyer, in talking about the temporary shielding, you described it as something like steel wool. Is that the texture of it?

A Yes, it looks just like that. It's in plastic. It's sewed in between strips of plastic with holes so it can be hung or wrapped or what have you. It is not pliable and it is not going to form itself well to whatever the source of the radiation is.

Q You stated that the difference between a radiation source with or without shielding might go from two millirems

per hour to four millirems for an hour?

A Yes, the more shielding you put on, you reduce the exposure, or rather, the exposure rate.

Q So, if the exposure rate was 200 millirems per hour, you might get 400 without the shielding?

A That's correct.

Q Then, admittedly, there is a great difference or there could be a great difference in the amount of radiation without the shielding?

A Right. The exposure rates will vary with or without the shielding, that's correct.

Q Are you in the dome very often?

A Yes.

Q You have technicians there who monitor the amount of radiation received by the workers while they are in there?

A Yes.

Q Have you ever found a technician sleeping in the dome?

A No, we did not. People have been accused of it, but I have never personally found anyone asleep.

Q But, people have been accused of it?

A Yes.

Q How old are you, Mr. Meyer?

A I'm 30.

Q Have you ever met Mr. Blackburn before today?

A I don't believe so.

Q Did you realize this was the first nuclear facility he had worked in?

A I do, yes. I didn't before reviewing the record, but he didn't have any lifetime exposure prior to Robinson, so I assume so.

Q You have heard testimony indicating that he had worked there six months prior to the time he was terminated?

A Yes.

Q You also stated that this area to which he was to be assigned was a locked high radiation area?

A That's correct.

Q But, you did not know exactly which part of that area he would be assigned to. Is that correct?

A That's correct. I only assumed, based on his statement that he filed with the Department of Labor and our record keeping of knowing where Mr. Blackburn was when he was there and where the other members of the crew had gone during these days in question.

Q Do you have any documents here, that show the range of millirems that were being given off in these locked areas during that time?

A Yes, we do.

Q What are the highest and lowest ranges that were being given off?

A Here is the routine surveilance report for September

fifth, which has everything but the pump bays and we have those, which we have submitted also as exhibits.

Q Have you looked at this lately?

A I have. I reviewed it and signed it, as a matter of fact. The exposure rates in there vary. Depending on the exposure rates, you have different requirements to gain access to the job. Certain areas must be either maintained locked or continuous coverage must be provided.

The pump bays, when no one was in there, were maintained locked. When someone was in there, that's why we kept a health physics technician in there.

There are four types of surveys, basically. Take this room for example. If you were going to work on this table, we'll take a contact radiation reading, which is the highest possible exposure rate from working on that piece of equipment.

Obviously, you are not going to be--most work is not done in contact with the equipment, so we take an 18 inch reading because that is approximately where your chest or your body is going to be when you are working on something.

We then smear this to determine the amount of dust or contamination available to get on your clothing or skin or into the air, and we pull an air sample. We suck up a known volume of air from this area while you are working and prior to your working and determine how much activity is in the air

that you breathe.

Q Talking about acute doses, are you familiar with Respondent's Exhibit No. 1, the General Employee Training Manual?

A I'm familiar with it.

Q Are you familiar with that on page 42, it talks about actute doses?

A I suspect that it would talk about it somewhere within the document.

Q It defines an acute dose as being the result of receiving a very large dose of radiation exposure in a relatively short period of time, usually less than 24 hours?

A That's correct.

Q It goes on to say in this table here, for instance, if you received 20 to 25 rems--

A Yes, 20 rems would be 20,000 millirem. We have been talking about millirem and that is 20,000 or 25,000 millirem, well above any federal or CP&L limit.

Q You would have minor blood changes?

A That is the first observable biological effect, at 20,000 or 25,000.

Q Between 5 and 20 rems, there would be more changes.

MR. BURDETTE: Objection. Counsel is not reading the chart correctly.

MS BURNETTE: Your Honor, I believe I am.

JUDGE VONBRAND: Why don't you show that to the witness and ask him?

Q (by Ms Burnette) Would you please read here?

A It says, effects of acute radiation dose, and it is a table with dose in one column and effect in the other column. From zero to five, if you were to receive it within a 24 hour period, there would be no observable changes.

From 5 to 20--and let's make sure that we're clear here, all the limits I have talked about have been millirem, so from zero to five, a millirem is one thousandth of a rem.

This is 5000 to 20,000, slight changes seen in the laboratory, maybe some chromosome aberations or what have you.

Q Can you tell us the range of millirems in the area to which he was to be assigned?

A Well, he would have entered the containment.

MR. BURDETTE: Well, Your Honor--?

JUDGE VONBRAND: What is your objection?

MR. BURDETTE: My objection is that the witness should testify as to apples and apples, and not apples and dough nuts Your Honor. This table that she was questioning from shows rems. A millirem is one thousandth of a rem.

MS BURNETTE: Your Honor, I understand that.

JUDGE VONBRAND: I think this witness can keep it straight. Proceed.

THE WITNESS: Yes, sir. I think an important point

needs to made here, too. Those are the dose limits. Your question is the exposure rate and there is a big difference.

Where you enter the containment, the hatchway, so to speak, based on this survey record, on the platform immediately after entry, the exposure rate is ten millirem per hour.

You then, walk down the steps and enter a ten millirem per hour exposure field. You walk around this area and enter into C and B pump bay, which is where I believe, Mr. Blackburn would have been asked to work.

Q But, you do not know where he was going to be asked to work?

A I only know where his fellow workers--well, we don't know where he would have worked because he didn't go in.

Q At the time he was fired, he did not know where he was going to work?

A That is what he has said, yes.

Q Could you find on that sheet, the maximum exposure someone might have gotten from going into this area? Is that possible to say?

A You have to tell me which area. Then, we can talk about what the exposure rates were, and then, we talk about how long the individual would have been asked to go in there to receive the dose.

Q We do not know how long he would have been asked to stay in any particular area, though?

A No, we don't. All we do know is what other individuals picked up and the fact that no one exceeded any dose limits during the whole project.

Q We do not know where he was going to be assigned, so out of that whole stack of pages, he might have been assigned to any of those areas. Correct?

A Well, I can't answer that. Based upon the work that was going on, we have a good idea of what he would have been asked to do, I think.

JUDGE VONBRAND: What exhibits are you basing that opinion on? What are the exhibit numbers?

THE WITNESS: Based on Respondent's Exhibit 8, which is the list of the two electrical crews, the dose they picked up on those two days, what their quarterly dose was from working there from approximately July to September of that year and their yearly dose.

Q (by Ms Burnette) You are basing your opinion on information that was obtained after he was terminated?

A That's correct.

Q Think about information that was available to him and others prior to the time he was terminated.

A This would have been available to him, as posted outside of the area. This is Respondent's Exhibit 4. It would have been posted.

Q I am trying to find out the maximum range that someone

might have been exposed to. Can you tell me that?

A On Map Number One, which is the first level of the CV, the range goes from 8 millirem per hour to 24 millirem per hour, so if they would have stayed in there an hour, they would have gotten that does.

On the first level CV Map Number Two, the range goes from less than 2 millirem per hour to 10 millirem per hour. On Head Storage Area Map Number three, the range goes from less than two millirem per hour to eight millirem per hour.

On the first level Map Number four, the millirem per hour reading for 18 inches goes from 2 millirem per hour to 25 millirem per hour.

On the second level CV Map Number Five, the range goes from less than two millirem per hour to six millirem per hour.

The second level CV Map Number Six, the range on this goes from two millirem per hour to 24 millirem per hour. Third level CV Map Number Seven, the range goes from less than two millirem per hour to four millirem per hour.

Third level CV Map Number Eight, the range is less than 2 millirem per hour to 8 millirem per hour. Third level CV Map Number Nine, the range is from less than two millirem per hour to two millirem per hour.

Q Do you have informaion on the millirems per hour which would be given off under the floor in B or C pump bay? Is

that included on this map?

A No, it's not.

Q Do you have information on that?

A Under the floor?

Q Yes.

A There is nothing under the floor except ground of B and C pump bays. There is a sump area below the reactor and there are areas below the pressurizer. But, I believe that the area that the crew that Mr. Blackburn was asked to sign on went below the pressurizer.

Q Do you have information on the millirems there?

A Yes, we do. It is in another exhibit. I can point it out to you, if you like.

Q Here, see if you can find it?

A We have September fourth and September fifth survey readings. In the area going up to the platform to be working on this one job that I believe Mr. Blackburn would have been asked to work on, the 18 inch readings are 20 millirem per hour to 300 millirem per hour.

Q Up to 300?

A Yes. That is Exhibit 10. This is Exhibit 9, on the fifth, the surveys from September fifth. In that same area, the readings range from 15 millirem per hour to 180 millirem per hour. I would like to qualify something about survey readings: They may or may not be done by the same individual

every day. They may or may not be done on the exact same location, so they will vary depending obviously, on where you take the exposure rate.

Q So, if it says 250 on one day and 300 on another day?

A What you have to do is look at the specific points. It may have been on one side of the room one day and on the other day, it may have been on the other side of the room. We are not talking about specific points, we are just giving the range within that room.

Q So, the 150 reading was taken on this side of the room, and you walked over to the other side of the room, you might get 300. Is that right?

A That is correct.

Q Is that all for that one?

A Yes, it is. There are other surveys for other pump bays as a part of these exhibits.

Q Do you know Richard Miles?

A No, I do not.

Q Did you know that he was a Quality Control Technician?

A I did not know that until I read it.

Q You have received extensive training in this area, have you not?

A Yes.

Q You have also had a great deal of experience in working with radiation. Correct?

A Approximately ten years, yes.

Q You listed details on what you know about it and how it works?

A Yes.

Q You heard testimony that Mr. Blackburn has only a high school education?

A Yes.

Q He had only worked at this plant for about six months and you would agree that you have a whole lot more experience than he does, would you not?

A More knowledge. I don't have any more information than he does. That's why we post these things. We train individuals.

Q You have the background to understand exactly what this information means. You have a broad background. Isn't that true?

A Yes, that's true.

Q Do you find that workers' fears are calmed once they get more information?

A Yes, that's true.

Q Would you believe that a worker could look at some of these readings and be told by a Quality Control Technician, "I wouldn't go in there if I were you?"

MR. BURDETTE: Objection.

MS BURNETTE: And have a reasonable fear that it would

not be safe?

JUDGE VONBRAND: What is the objection?

MR. BURDETTE: There is no testimony here about any conversation with Quality Control Technicians.

MS BURNETTE: Your Honor, I believe there has.

JUDGE VONBRAND: I will overrule the objection, and you can renew it, after reviewing the transcript, if there are grounds. Proceed. You may answer.

Q (by Ms Burnette) Do you think he might have a reasonable fear for his safety?

A That's a matter of what reasonable is. Workers and us are always talking to each other. I don't know if I'd call it reasonable. I can see where someone could be fearful, yes.

Q He might could bring those concerns to his foreman?

A Yes.

Q Would you believe that if the foreman had checked out the information and brought back more information and attempted to calm his fears, that might have worked? Have you had that experience in working with these people?

A Yes.

MS BURNETTE: No further questions.

JUDGE VONBRAND: Redirect?

REDIRECT EXAMINATION

Q (by Mr. Burdette) Had Mr. Blackburn gone into the

dome on September 5th, he would have had a patch on his back which would have stated the amount of radiation that he would have been permitted to be exposed to during that day?

A That is correct. His entry dose limit that day.

Q That would have been below every NRC or other lawful and legal limits for radiation exposure. Is that not correct?

A That is correct.

Q Would there have been monitoring taking place in there to make sure that limit was not exceeded?

A That's correct. There was continuous health physics coverage in the pump bay.

Q So, despite Mr. Blackburn's high school education, and he knew that was a fact, right, he did not have to read these things, he would have known that there was monitoring and that his radiation exposure limits were assured not to have exceeded the limited dose?

A Yes, he should have known.

MR. BURDETTE: Thank you.

JUDGE VONBRAND: You are excused.

(The witness was excused).

JUDGE VONBRAND: Do you have other witnesses?

MR. BURDETTE: No other witnesses.

JUDGE VONBRAND: Do you want a recess?

MS BURNETTE: Just five minutes, Your Honor.

JUDGE VONBRAND: Off the record.

(A five minutes recess was held).

JUDGE VONBRAND: On the record. We have discussed our briefing schedule and both sides are agreeable to filing their briefs on February 15, 1986.

There being nothing further, this hearing is adjourned at 12:30. Thank you very much.

(Whreupon, the hearing in the above-entitled matter was adjourned at, 12:30 p.m.).

REPORTER'S CERTIFICATE

DOCKET NUMBER: 86-ERA-4

CASE TITLE: Paul A. Blackburn

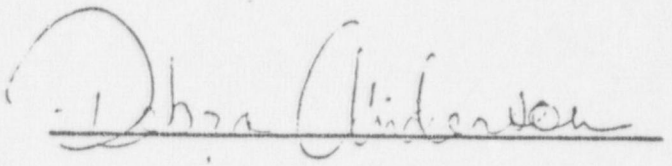
HEARING DATE: December 16, 1985

LOCATION: Columbia, South Carolina

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before The United States Department of Labor

and that this is a true and correct transcript of the case.

Date: December 21, 1985



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