

<p>IN THE MATTER OF A CONTROVERSY</p> <p>BETWEEN</p> <p>PACIFIC MARITIME ASSOCIATION</p> <p>AND</p> <p>INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63</p> <p>Re: Alleged violation of the technology Framework of the 2002 MOU and Section 1 of the PCCCD by Marine Terminals Corporation</p>	<p>SCAA-0013-2005</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>May 23, 2005</p> <p>Long Beach, California</p>
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The hearing was held at 11:50pm on Monday, May 23, 2005 at the Pacific Maritime Association, 100 West Broadway, Suite 3000, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS: Jacqueline Ferneau
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
ILWU Local 63

ALSO PRESENT: A. Diaz, Local 63
S. Lindsay, MTC
T. Tobin, MTC
E. Bohn, MTC
J. Otis, APMT

ISSUES:

Whether Marine Terminals Corporation, hereafter MTC, is in violation of the 2002 MOU and Section 1 of the PCCCD by inputting into a database the number of the device and then assigning it to equipment at a terminal by someone other than a Marine Clerk.

BACKGROUND:

Union Exhibit No. 2 confirms disagreement was attained at the JCLRC meeting of March 10, 2005 as it relates to this issue. The parties agreed to refer this issue to the Area Arbitrator.

UNION:

The Union submitted Exhibit No. 3 and this glossary shall be used to clarify terms used in this award.

Glossary

Now Solutions – Vendor who developed the EPS system

EPS – Equipment Positioning System

CHE – Container Handling Equipment

DGPS – Differential Global Positioning System

RTACTCS – Real-time Automated Container Tracking and Control System

ASSET – Any piece of equipment that has a Now Solutions unit in it, i.e., UTR, Top Handler

The Union maintains that the violations have occurred at the following three terminals, West Basin Container Terminal, hereafter Yang Ming, Seaside Transportation Services, hereafter Evergreen, and Total Terminals, hereafter Hanjin.

In addition, the Union asserts that MTC has entered into a contract with a third party vendor (Now Solutions) to provide the inputting of the information in dispute.

This is a clear violation as the Union alleges of Section 1 of the PCCCD and Section VI (A) of the 2002 MOU.

The substance of the Union grievance is that MTC instructed mechanics at the three terminals to install Now Solution devices onto CHE's thus creating an asset that could be used by EPS.

Union Exhibit No. 16 reads:

A. Controlling Principles

The Employers shall have the right to implement technologies that may affect marine clerks, subject to the following controlling principles.

1. All traditional marine clerk work modified by any technology shall be assigned to marine clerks in accordance with Section 1 of the PCCCD as modified herein.
2. Work assignments may be discontinued to the extent they become unnecessary as a result of technology.
3. In consideration for the modification and elimination of certain marine clerks' work that may occur as a result of technology, any new marine clerks' work created by the introduction of technology shall be assigned to marine clerks at a terminal and, thereafter, such assignment shall be construed as having the same effect as if it were an addition to Section 1 of the PCCCD at that terminal. All work created by technology or modified by technology that is functionally equivalent to the work of marine clerks within their traditional Union jurisdiction, shall be assigned to marine clerks and remain marine clerks' work. It is further agreed that:
 - a. New technologies shall be implemented in accordance with traditional Union jurisdiction set out in Section 1 of the PCCCD.

- b. All traditional marine clerk's work, including work modified by any technology, shall be assigned to marine clerks in accordance with Section 1 of the PCCCD.
- c. All work created by technology, including the operating of such technology, that is functionally equivalent to traditional marine clerks' work shall be assigned to marine clerks.
- d. Technologies shall not be used to shift traditional Union jurisdiction to non-bargaining unit employees or facilities. Bargaining unit jobs may be eliminated only as a result of labor-saving devices and technologies and not as a means to achieve labor cost savings by using a cheaper work force or subcontractor.

The Union contends that the functions in dispute are enclosed in the above sections of the 2002 MOU.

EMPLOYER:

The Employers presentation reminded the Area Arbitrator that each issue is to be considered on a case-by-case, terminal-by-terminal basis.

In addition, the Employer is reliant upon the fact that there shall be no re-keying of information.

The Employer submitted the following six (6) arguments as it pertains to this issue.

NUMBER 1. "THE INFORMATION, THE SERIAL NUMBERS FOR EACH DEVICE, TO BE ENTERED AND KEYED IN INTO A DATABASE AND MARRIED TO EACH PIECE OF CONTAINER-HANDLING EQUIPMENT, IS NOT WITHIN THE CONTROL OF THE COMPANY, M.T.C., AS A TERMINAL OPERATOR.

NUMBER 2. "THE INFORMATION IS NOT TRADITIONAL RECORDKEEPING MAINTAINED BY I.L.W.U. MARINE CLERKS OR WORK THAT IS FUNCTIONALLY EQUIVALENT TO TRADITIONAL MARINE CLERK WORK. THE WORK CLAIMED IS AN EXPANSION OF CLERK JURISDICTION.

NUMBER 3. "TRADITIONAL MARINE CLERK WORK INVOLVES THE ASSIGNMENT OF EQUIPMENT TO AN OPERATION OR AREA WITHIN THE TERMINAL OPERATING SYSTEM FOR THE PURPOSE OF FLOWING CARGO, NOT THE COMPUTER PROGRAMMING OR TOOL BUILDING METHODS.

NUMBER 4. "THE DATA INPUT WORK SOUGHT BY THE UNION AS IT RELATES TO M.T.C.'S EQUIPMENT POSITIONING SYSTEM TECHNOLOGY IS THE SAME PROGRAMMING WORK AND FUNCTIONS PERFORMED BY M.T.C. I.T. PERSONNEL IN THE TERMINAL OPERATING SYSTEM SINCE 1999, AND FOR WHICH, TO DATE, THE UNION HAS NEVER CLAIMED THIS WORK.

NUMBER 5. "THE INFORMATION AS CLAIMED BY THE UNION IS AVAILABLE ELECTRONICALLY AND FREE FLOWS INTO THE TERMINAL

OPERATING SYSTEM. A CLERK'S INVOLVEMENT WOULD MEAN RE-KEYING OF INFORMATION, WHICH WOULD REPRESENT A VIOLATION OF THE EMPLOYER'S RIGHTS UNDER THE TECHNOLOGY FRAMEWORK.

NUMBER 6. "LASTLY, THE FACT SITUATION OF THE SPECIFIC DEVICE INFORMATION AND CONTAINER-HANDLING EQUIPMENT IS NOT THE SAME AS IN THE TRAPAC CASE; THEREFORE, IT MUST BE JUDGED ON ITS OWN MERITS, ON A SEPARATE CASE-BY-CASE BASIS."

OPINION:

This Arbitrator in the opening of his opinion must address the Employer's position.

This Arbitrator wants the Employer to understand that he comprehends his obligation to take each technology issue on a case-by-case basis.

In addition, this Arbitrator will not be intimidated by the lengthy dialog that is not relevant to the dispute by either party.

This decision, as have past decisions, shall be based on the Collective Bargaining Agreement and the complete record.

As to this dispute it is obvious to this Arbitrator that MTC entered into an agreement with Now Solutions to perform work that is properly Marine Clerks work.

Union Exhibit No. 18, which is the decision of Kagel Award C-3-1980, reads as follows:

"THE CLAIM THAT LONE STAR INDUSTRIES RELIEVED THE STEVEDORING COMPANY FROM ITS OBLIGATION AFTER IT PLACED THE CEMENT IN THE HOPPER ITSELF DOES NOT, OF COURSE, CONTROL IN THIS CASE, SINCE THE STEVEDORING COMPANY IS A PARTY TO THE I.L.W.U. - P.M.A. AGREEMENT. LONE STAR INDUSTRIES IS NOT A PARTY TO THE AGREEMENT AND CANNOT MAKE ANY ARRANGEMENTS WHICH WILL EXCHANGE OR MODIFY THE TERMS OF THE AGREEMENT BETWEEN THE I.L.W.U. AND THE P.M.A. AS TO THE WORK TO BE PERFORMED BY I.L.W.U. MEMBERS."

The above decision is most relevant to the instant issue in dispute.

The issue of re-keying is not arguable by the Employers based on the fact MTC allowed Now Solutions to perform the original input of information.

The parties have agreed that the three (3) terminals listed in this dispute shall be subject to the following decision.

DECISION:

1. MTC is in violation of the 2002 MOU and Section 1 of the PCCCD by allowing Now Solutions to input data into a computer that pertains to container handling equipment.
2. MTC shall remove any input by Now Solutions from its database as it relates to this issue.

3. Marine Clerks shall be employed to perform the original input of information provided by the mechanics.
4. MTC shall complete the removing of information and allow Marine Clerks to input the work in dispute within twenty- one (21) days of this decision.
5. The Union claims for lost work penalties are denied.

/s/ David Miller

David Miller
Area Arbitrator Southern California

Dated: June 13, 2005