

<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: An alleged violation of the PCCCD by SSAT as it pertains to Yard and Rail Planning</p>	<p>SCAA-0029-2005</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>September 7, 2005</p> <p>Long Beach, California</p>
---	--

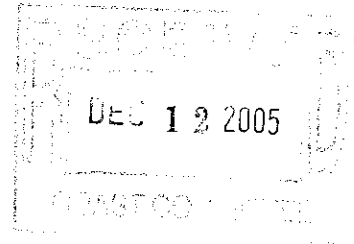
The hearing was held at 9:04 A.M. on Wednesday, September 7, 2005 at 1521 Pier "J" Avenue, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS:     Jacquie Ferneau  
Pacific Maritime Association

FOR THE UNION:         Joe Gasperov  
ILWU Local 63

ALSO PRESENT:         J. Tousseau, Local 63  
C. Alsop, SSAT  
M. Harding, SSAT  
J. Rosselle, SSAT  
B. Mannino, SSAT  
R. Inlow, SSAT  
F. Birkenbach, SSAT  
S. Lira, SSAT  
A. Bates, SSAT  
S. Ferrigno, SSAT  
R. Clark, PMA



ISSUE:

Whether SSAT is in violation of the PCCCD by not assigning the following work to marine clerks.

- 1) Create and Delete all yard blocks
- 2) Assign Block Properties
- 3) Edit Block Properties
- 4) Position a block on the terminal layout
- 5) Automatic Gate Criteria Sets
- 6) System Criteria Sets (creating, deleting and editing)
- 7) Terminal Editor
- 8) Yard Planning discharge recap
- 9) Yard Planning Vessel Schedule

- 10) SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required

SSA has not assigned the following yard planning screen to marine clerks:

- 1) Yard Planning Vessel Schedule

SSA has not assigned the following rail planning functions to marine clerks:

- 1) Set up rail tracks (rail editor)
- 2) Set up rail-car classes
- 3) Define rail schedule
- 4) Define rail service properties
- 5) SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required.

#### BACKGROUND:

Joint Exhibits No. 1 and No. 2 confirms that disagreement was reached at the JCLRC Meeting of October 25, 2004. The parties agreed to refer the issue to the Area Arbitrator pursuant to Section 6-B-8 of the Technology Framework.

It was stipulated by the local parties that this issue and decision shall be relevant to the Pier "A" and PCT Terminals without setting precedent as it pertains to future arbitrations.

#### UNION:

The Union's contention is that SSA is not fully implementing Section 4-e of the framework as it relates to yard and rail planning. Section 4-e reads as follows:

- e) In exchange for the Employers' right to introduce new technologies, the following work and functions shall be assigned to marine clerks at all facilities covered by the PCL&CA.

- i) Yard Planning Operations

Marine clerks shall be assigned yard planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a terminal dock or container yard facility where cargo is to be placed or relocated and involving the preparation, confirmation, distribution and reconciliation of all documents required by the employer for such work, including the input of data or the utilization of computer programs. It is understood that the practice of direction of supervisors by management is recognized and shall not be disturbed.

- ii) Rail Planning Operations

Marine clerks shall be assigned rail planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a rail car where cargo is to be placed

or relocated and involving the preparation, confirmation, distribution and reconciliation of all documents required by the employer for such work, including the input of data or the utilization of computer programs. It is understood that the practice of direction of supervisors by management is recognized and shall not be disturbed.

The Union refers to Items No. 1 – 10 as described in the issue portion of this award and sub-items as examples of work functions that should be assigned to the bargaining unit. In addition, the Union emphasizes that the work functions in dispute do not require a great deal of time to perform, however regardless of the amount of work involved, it must be assigned to marine clerks.

It is the Union's contention when addressing Item No. 2 that this function involves the setting up of an area in the yard for a particular type of container.

In Item No. 3 the Union states that it is marine clerks work to input the properties of that block such as color and any restrictions ordered by the Employer.

Addressing Item No. 4 the Union again contends that making changes or relocating blocks within the system should be performed by marine clerks.

In summary, the Union's position is that marine clerks should utilize computer programs that the Employer has installed to perform clerks work.

The Union submitted the following text from Kagel Award of December 13, 2004, it reads:

Management Functions:

While the Employer has relied in large part on history which has been rewritten by the adoption of the MOU it has also maintained that to uphold the Area Arbitrator decision abrogates the functions of management. No violation of the yard planning provision's final sentence is found here: "It is understood that the practice of direction of supervisors by management is recognized and shall not be disturbed." The Marine Clerks are doing what they are directed to do by management, physically locating empties and recording their locations.

There further is no violation of the Letter of Understanding of November 1, 2002 which reads in pertinent part:

"Nothing in the [Technology] Framework reduces or expands the established contract language and practices regarding management's right as to the direction of marine clerk supervisors by management, the determining of overall business operations, and the setting of business and operational priorities." There is no issue concerning Marine Clerk supervisors' taking direction; the overall business operations and the setting of business and operational priorities are not affected except to the extent that the new, specific provisions of §IV.A.4.e.i. require, as the Parties agreed.

Office Work:

The same analysis applies to the contention of the Employer that the work is office work over which the Union has no jurisdiction. Again, data inputting for yard planning is specifically reserved to Marine Clerks under the Memorandum of Understanding, a Coast agreement which was agreed to after the Port Supplementary Agreement of Los Angeles-Long Beach and, where applicable, as here, supersedes it.

However, such inputting was prior to the MOU which as it refers to yard planning was a new expansion of Marine Clerks' work (Tr. 94) and the MOU now takes precedence over that history if the work in question falls within §IV.A.4.e.i.

The Union's presentation on disputes listed under issue's No. 5 through No. 10 remained consistent with their position of record on Items No. 1 through No. 4.

On the record when addressing the issue of rail planning the Union maintained a position that was similar to that of yard planning.

EMPLOYER:

The Employers contend that the Union has failed to specifically identify the work functions or tasks that they claim are being performed by other than marine clerks. In addition, it is the Employer's position that many of the issues could be grouped together.

Employer Exhibit No. 1:

ISSUES AS DEFINED BY THE EMPLOYERSIssue No. 1

Whether items 1, 2, 3, and 4 as part of item 7 identified under yard planning, and item 7 (CLRC Minutes #24-04, item d and e) constitute yard planning functions and duties to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(i) of the Technology Framework.

- 1) Create and Delete all yard blocks
- 2) Assign Block Properties
- 3) Edit Block Properties
- 4) Position a block on the terminal layout
- 7) Terminal Editor

Issue No. 2

Whether items 5 and 6 (CLRC Minutes #24-04, item d and e) identified under yard planning constitute yard planning duties and functions to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(i).

- 5) Automatic Gate Criteria Sets
- 6) System Criteria Sets (creating, deleting, & editing)

Issue No. 3

Whether item 8 (CLRC Minutes #24-04, item d and e) identified under yard planning constitutes a yard planning duty and function to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(i).

- 8) Yard Planning discharge recap

Issue No. 4

Whether item 9 (CLRC minutes #24-04, item d and e) identified under yard planning and item 1 under yard planning screen constitute a yard planning duties and functions to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(i).

- 9) Yard Planning Vessel Schedule

Issue No. 5

Whether the "lists" identified and discussed by the joint parties in reference to item 10 (CLRC Minutes #24-04, item d and e) constitute yard planning duties and functions to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(i).

- 10) SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required.

Issue No. 6

Whether items 1, 2, and 4 (CLRC Minutes #24-04, item d and e) identified under rail planning functions, constitute duties and functions to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(ii).

- 1) Set up rail tracks (rail editor)
- 2) Set up rail-car classes
- 4) Define rail service properties

Issue No. 7

Whether item 3 under rail planning (CLRC Minutes #24-04, item d and e) constitutes a duty and function to be assigned to a marine clerk, as defined by Section VI (A)(4)(e)(ii).

- 3) Define rail schedule

Issue No. 8

Whether item #5 under rail planning (CLRC Minutes #24-04, item d and e) is an arbitral issue given the Union's overly broad and general claim and the parties have not exchanged any documentation related to this issue.

- 5) SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required.

This exhibit condensed the sixteen (16) issues submitted by the Union into eight (8) issues as defined by the Employers, the Employers objected to the method used by the Union to submit the issues contained in the instant dispute. It is the Employers position that the Union has not been specific in their claim thereby denying the Employer an opportunity to research and respond appropriately.

In the Employer's argument it is alleged that certain job functions claimed by the Union to be assigned to non-clerks are in fact being performed by marine clerks. The Employers also stated that certain functions must not be given to anyone other than senior management for the reason that any minor error could have a far reaching negative impact on the terminal.

#### OPINION:

This Arbitrator is confident in assessing what functions are marine clerks work as described in 4-E of the framework. In addition, the Kagel Award of December 13, 2004 shall be a guidance of authority in attainment of a final decision.

It is with certainty that the work in question is under the jurisdiction of the 2002 Master Agreement. This Agreement takes precedence over any past practice as it pertains to the instant issue.

The Sections of the Agreement that are in dispute 4-E i and 4-E ii are identical in wording with the exception of the words "yard" and "rail". However, for clarification each issue as listed in Joint Exhibit No. 1 (CLRC Meeting of October 25, 2004) shall be decided separate and apart from each other.

The following decisions where relief is granted the Union shall be subject to implementation as governed by Union Ex. 2, The Spinnaker Manual.

It is essential that regardless of how inconsequential or minuscule the work in dispute exists such work when confirmed becomes an obligation of the Employer to assign such work to Marine Clerks when it is required to be performed.

#### DECISION:

##### Yard Planning

1. Create and delete all yard blocks: Marine clerks shall be assigned the functions of creating and changing yard blocks.
2. Assign block properties: Marine clerks shall be assigned the function of imputing the properties and making changes within this program.
3. Edit block properties: Marine clerks shall be assigned the function of changing any block in the yard.
4. Position a block on the terminal layout: Marine clerks shall be assigned the function of moving a block within the yard.
5. Automatic gate criteria sets: Marine clerks shall be assigned the function of updating the gate criteria sets.
6. System criteria sets (creating, deleting and editing): Marine clerks shall be assigned the function of creating and changing criteria sets.

7. Terminal editor: This is not a job function that was claimed by the Union.
8. Yard planning discharge recap: The Union did not present a claim for this function upon which relief may be granted.
9. Yard planning vessel schedule: The Union did not present a claim for this function upon which relief may be granted.
10. SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required: Marine clerks shall be assigned the function of preparation, confirmation, distribution and reconciliation of all documents listed in Union Ex No. 10.

SSA has not assigned the following yard planning screen to marine clerks: (1) Yard planning vessel schedule: This is a duplicate request and has been addressed in Item No. 9.

#### Rail Planning

1. Setup rail tracks (rail editor): Marine clerks shall be assigned the functions of setting up rail tracks and making changes.
2. Setup rail-car classes: Marine clerks shall be assigned the functions of setting up rail-car classes and making changes.
3. Define rail schedule: Marine clerks shall be assigned the functions necessary to create a "rail visit".
4. Define rail service properties: Marine clerks shall be assigned the functions of setting up and making necessary changes as it pertains to rail service properties.
5. SSA has not assigned the preparation, confirmation, distribution and reconciliation of all documents required: The Union's claim for these functions is ambiguous and has failed to state a claim upon which relief may be granted.

/s/ David Miller

---

David Miller  
Area Arbitrator Southern California

Dated: November 29, 2005