

<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 Violations of the Technology Framework and Section 1 of the PCCCD by SSA</p>	<p>SCAA-0005-2009</p> <p>Opinion and Decision</p> <p>of</p> <p>David Miller Area Arbitrator</p> <p>January 21, 2009</p> <p>Long Beach, California</p>
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The hearing was held at 9:00 AM on January 21, 2009 at 1521 Pier "J" Avenue, Third Floor, 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, PMA
Pacific Maritime Association

FOR THE UNION:

Joe Gasperov
ILWU Local 63

ALSO PRESENT:

T. Kennedy, PMA
S. Ferrigno, SSA
B. Mannino, SSAT
A. Baddeley, SSAT
M. Nichols, SSA
C. Alsop, SSAT
M. Harding, SSAT
A. Bates, SSAT
R. Maynez, Local 63
M. Ponce, Local 63
A. Diaz, Local 63
C. Mejia, Local 63
J. Spinosa, Local 63

ISSUE NO 1:

Whether SSA is in violation of the technology framework and Section 1 of the PCCCD by allowing NBUP to input RDIF tag numbers for outside truckers into a database.

ISSUE NO 2:

Whether SSA is in violation of the technology framework and Section 1 of the PCCCD by allegedly assigning clerk work to longshore transtainer drivers.

BACKGROUND:

Both parties are in agreement that all provisions of the grievance procedure outlined within the technology framework have been achieved and the instant disputes are properly before the Area Arbitrator.

DISCUSSION:**UNION:**

It is the contention of the Union that SSA has allowed NBUP to input a RFID tag serial number into a database which subsequently marries such tag to a particular outside truck. By allowing NBUP to perform the above function the Union contends that SSA is violating Section A.2 of the framework.

"All traditional marine clerk work which is modified by any technology shall be assigned to marine clerk in accordance with Section 1 of the PCCCD, as modified herein."

In addition, the Union relies on Section 4-A (a-d) of the framework that reads:

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 initial input of the necessary information as it pertains to the RFID tags and the trucks should be assigned to marine clerks.

The Union's claim that a longshore transtainer operator is performing clerks work is based on a position that the operator is verifying the job task given to him (operator) of what container to deliver or receive by visually confirming such job task. The above job task as to what container is to be delivered or received is given by a clerk electronically through the computer system.

EMPLOYER:

The Employer contends that SSA is not the originating source or creator of the trucker data base as it pertains to the RFID tags. The RFID tag serial numbers are input by trucking companies using an electronic process.

The use of the RFID tags thus allows for the free flow of information and in the instant dispute a reduction in the number of clerks employed as outlined within (A)(2),(A)(3), and (A)(4)(d) of the framework.

As to the issue of the longshore transtainer operator performing clerk's work the Employer is reliant upon a long standing work practice and past arbitration awards in support of their position that no violation is occurring.

The following awards in support of the Employer's position were submitted: C-01-2002, C-05-2007, C-10-2006, SCAA-0004-2005, and SCAA-0018-2008. Even though the framework is applied by facility based on their own facts, Coast Arbitrator Kagel has stated "if the facts of a given case fit into those of a past decision, the principle of that decision can be applicable to it."

OPINION:

The contention of the Union in regards to the instant issues is principally similar to argument raised by the Union in previous arbitrations.

This Arbitrator has considered all facts and awards that are pertinent to the issues. All sections of the framework must be taken into consideration. It is obvious that the parties contemplated the particular facets of each terminal. Again, as stated by Coast Arbitrator, Kagel in C-1-2008, "If the facts of a given case fit into those of a past decision, the principles of that decision can be applicable to it."

There is no compelling evidence by the Union to establish that the Employer has violated the framework or Section 1 of the PCCCD as it pertains to the RFID tag. The Employer in the instant dispute is not initiating or operating the database described in this dispute.

The contention of the Union is fundamentally similar to such claims that were denied in previous coast awards.

The contention of the Union that the transtainer operator is performing clerks work is denied based on the long standing practice that the longshore worker is performing his particular job task as a direct result of direction given by a clerk.

In the instant issue, the Employer has replaced the 'old' method with a 'new' method using technology wherein the clerk gives a specific order to a longshore operator and such order is accomplished through the utilization of information conveyed by a clerk to the longshore operator's modat. The above issue is comparable in substance to award SCAA-0004-2005.

DECISION

Issue No. 1: The Union's claim is denied.

Issue No. 2: The Union's claim is denied



David Miller
Area Arbitrator
Southern California

Dated: February 20, 2009

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES
TECHNOLOGY FRAMEWORK B(10)

INTERNATIONAL LONGSHORE AND]	C-14-2009
WAREHOUSE UNION,]	
]	OPINION AND DECISION
]	
Union,]	of
and]	
]	JOHN KAGEL
]	
PACIFIC MARITIME ASSOCIATION,]	Coast Arbitrator
]	
Employers.]	November 16, 2009
]	
]	Palo Alto, California
Re: Union's appeal SCAA-0005-2009]	

APPEARANCES:

For the Union: Leal Sundet, Coast Committee Member

For the Employers: Jacqueline Ferneau, Director, Rich Marzano, Coast
Director, Contract Administration and Arbitration

ISSUES:

1. Whether SSA is in violation of the Technology Framework and Section 1 of the PCCCD by allowing non-bargaining unit personnel to input RFID tags for outside truckers into a database?

2. Whether SSA is in violation of the Technology Framework and Section 1 of the PCCCD by allegedly assigning Clerk work to Longshore Trainstainer Drivers.

ISSUE ONE

DISCUSSION:

Truckers entered the numbers of RFID tags placed on their trucks into a trucker database maintained by eModal. Those entries are used at the terminal for gate entry and by transtainers by readers which match up the trucks with the database. At the gate and at the transtainers the RFID match fills in the license plate number to identify the truck. Previously a Marine Clerk would fill in the license plate number at the gate.

The RFID tags were issued to trucking companies who wanted them by PierPass. SSA has some role in PierPass but what that is is not clear from the record nor is the makeup of PierPass in terms of what kind of entity it is nor the role of other PMA members in it. According to the Union it is its belief that PierPass was a creation of the Marine Terminal Operators Association (MTOA) which, among other things, sought to promote a common identification method for trucks coming into their terminals by the use of RFID tags or other means. (Jt. Ex. 3, Un. Ex. 4, ¶ 4.2)

Union issues concerning the MTOA were raised before the Coast Arbitrator in 2004 at which time the Coast Arbitrator determined that the Union issues were premature. However, during those proceedings PMA agreed that in the event the MTOA entered into a contract there would be discussions concerning such issues between the

Presidents of the Union and PMA. (See 2004 transcript p. 96) The record before the Area Arbitrator in this case did not mention PierPass. Given the lack of record evidence of the nature of PierPass in terms of PMA member participation and its possible connection to the MTOA it is appropriate to invoke the 2004 commitment through the Coast Arbitrator's retained jurisdiction in that case for those discussions to occur and for the CLRC to initially deal with any contractual issues that arise from them.

The contractual issue that arises from PMA member participation in PierPass' furnishing RFID tags is whether PMA members bound to the PCCCD required the use of such tags and required the trucking companies to make entries into a database used by terminal operating systems bypassing Marine Clerks in doing so. The Union maintains that such entries are contractually different from information normally created and maintained by trucking companies for its own use such as insurance information that has not required rekeying by Marine Clerks when transmitted into the terminal operating system through the eModal database. However, until the facts concerning PierPass are known these issues cannot definitively be decided.

DECISION AS TO ISSUE ONE:

The issues concerning PierPass, RFID's, their distribution and requirements are remanded to the CLRC first for a discussion concerning this issues between the Presidents of the Union and PMA, and then by the CLRC, the Coast Arbitrator retaining jurisdiction in the event the Parties do not otherwise resolve these issues.

ISSUE TWO

BACKGROUND:

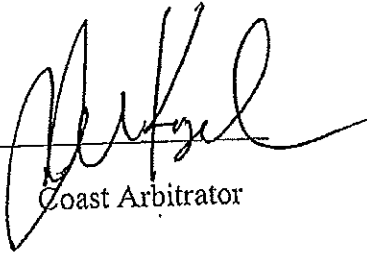
Transtainer MODATS receive both the location and container numbers of the containers the Operator is to load onto trucks by transmissions initiated by Marine Clerks. The Union maintains that a Longshore Operator reading a container number violates the PCCCD. The Technology Framework requires that issues presented under it be determined terminal by terminal. However, as already held, if the facts and attendant ruling at one location parallel the facts at another the ruling will be followed at the latter location.

In case C-07-2009 it was held that Equipment Operators, as authorized in the 1996 MODAT letter, could match locations and container marks to receive direction as to container movement. Here, as in that case, the evidence established that Marine Clerks directed that movement by transmission of directions to Operators. Further, as in that case, any discrepancy in the combination of location and container number is to be corrected by a Marine Clerk based on standing operating instructions to Equipment Operators. For example, the record shows that even if the Operator spots the container by its number at a different location than indicated on the MODAT, and even if the trucker urges the Operator to load that container, the Operator is required to notify a Marine Clerk for instructions as to how to proceed. (Tr. 115) There is no reason shown why, given the parallels between the situation here and that of C-07-2009, there should be a different result. No PCCCD violation is shown.

DECISION AS TO ISSUE TWO:

The Area Arbitrator decision as to Issue Two is affirmed.

THE ABOVE DECISIONS ARE HEREBY AFFIRMED


Coast Arbitrator