

<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>Whether SSA is in Violation Of The Technology Framework Of The 2002 MOU And Section 1 Of The PCCCD.</p>	<p>SCAA-0008-2004</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>April 21, 2004</p> <p>San Pedro, California</p>
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The hearing was held at 9:01 AM, on Wednesday, April 21, 2004 at the Marine Clerks Local 63, at 350 West 5th Street, San Pedro, 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: Tim Kennedy, PMA
Jon Roselle, SSA
Arnold Baddeley, SSA
Becky Mannino, SSA
Sandra Lira, SSA
Pieter Suttor, SSA
Alan Bates, SSA
Adrian Diaz, Local 63
Stanley Lee, Local 63
Peter Peyton, Local 63

ISSUE:

Whether SSA is in violation of the 2002 MOU and Section 1 of the PCCCD by assigning the input of yard locations into a computer by someone other than a Marine Clerk?

BACKGROUND:

Joint Exhibit No. 1 was submitted and confirms a disagreement was reached by the parties at the JCLRC Meeting of March 4, 2004.

The parties agreed to refer the issue to the Area Arbitrator pursuant to Section VI, Item (B) (8) of the Technology Framework.

DISCUSSION:

Joint Exhibit No. 2 was submitted, alleged by the Union that Section 4-E of the framework is being violated by the Employer. Exhibit No. 2 reads:

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.

The issue as presented by the Union is uncomplicated as it pertains to the alleged violations.

It is stated by the Union, that a Marine Clerk will hand write an inventory of all empty piles with the specific yard location. This list is then turned over to management who in turn fax the list to SSA Employees in Salt Lake City, Utah.

SSA Employees in Salt Lake City then input the container number and yard location into the computer.

At this point, the Union maintains that the assignment of this work to non-bargaining workers is a violation of Section 1 of the PCCCD and the 2002 MOU framework.

The Union introduced Section 1.13 of the PCCCD which reads:

1.13 Documentation work performed by clerks as of July 1, 1978 shall continue to be performed by clerks. In the event that new documents are developed which replace existing documents, then clerks shall be assigned to perform work on such new documentation. If computer remote terminals, electronic or mechanical devices are introduced to replace existing or new documentation, then clerks shall be assigned to perform work on such new equipment for that portion of the work which is recognized as being covered by Section 1. In any event, such work shall not be assigned to non-clerks off dock.

Also Sections 1.131, 1.251, 1.25121, 1.2522 and 1.25123 were submitted by the Union and reads as follows:

1.131 When any work described in Section 1 is performed by computer remote terminals, electronic, or mechanical devices, the necessary operation of such devices shall be performed by clerks for only the portion of the work which is recognized as being covered by Section 1. The intent is to preserve the traditional work of clerks as provided by the Agreement.

1.251 Clerk. An employee responsible for performing any or all of the following clerical functions related to receiving, delivering, checking, tallying, yard and/or cargo area inventorying (including containers), sorting, spotting and inspecting cargo and/or containers for the purpose of taking and recording exceptions, including the recording of necessary notations and the keeping of such records as may be required by the individual employer.

1.25121 Receiving and spotting cargo on the dock from land or water carriers (spotting cargo on the dock shall be deemed to include the marking of dock floors); checking marks on cargo; measuring cargo and marking ship and discharge points on cargo; receiving, delivering and consolidating empty containers and chassis; delivering cargo carriers; checking marks on delivery order against cargo; performing clerks' work under the terms of this Contract Document in connection with the handling or moving of palletized or boarded cargo or cargo in containers, or other cargo equipment.

1.25122 Also, tallying cargo on the dock, or if required by the individual employer, tallying special cargo aboard vessels, segregating by ports of discharge and cargo type; spotting cargo; marking cargo by vessel, port, reference number and number of packages.

1.25123 Also, checking, segregating, spotting and tallying cargo from water carrier to dock or carrier on discharge; spotting, checking and tallying cargo to water carrier from carrier or dock on loadout.

The following Arbitrations were put into the record by the Union to support their position: SC-43-79, SC-56-79, W-61-82, SC-31-83, C-21-83, SC-48-83, C-7-84, SC-05-88, C-5-88, W-17-88, C-7-89 and C-20-80.

All of the above Arbitrations were submitted by the Union to establish that the spotting of containers and the recording of those spots either by pen, pencil or electronic device is the work of a Marine Clerk.

The Employer contends that the work in dispute is properly defined as Vessel Planning. All Vessel Planning by SSA, as it relates to Pier "A" Long Beach, is performed in Salt Lake City.

On the record, the Employer also alleges that the Port Supplement of LA-LB supports a claim that the work in question should be categorized as general office work.

The only Arbitration submitted by the Employer to support their position is SC-23-2003. This Arbitration is not relevant to the issue.

OPINION:

The preponderance of evidence at this hearing obviously establishes that the input of yard spots for containers is the work of Marine Clerks.

What is most relevant to this Arbitrator are past Coast Arbitrations of Mr. Sam Kagel.

This excerpt from C-21-83 is most significant to this issue:

"... Therefore, contractually, it does not matter whether a clerk performs his work with a pen, pencil, typewriter, CRT, or a CRT attached to an electronic printing device such as the electronic printing device now in use at L.A.C.T. It also does not matter if the Interchange is prepared at the instant the container or chassis is received or delivered (the old L.A.C.T. procedure) or in a time delay fashion (the new L.A.C.T. procedure). It is clerks' work in either method." (Jt. Ex. 3)

Kagel Award C-5-88 is also pertinent to this issue.

In Kagel's Award he states in his Opinion:

The Agreement between the Parties in Section 1 reads, in part, "It is the intent of this Contract document to preserve the existing work of such Employee," and the work that is to be preserved is that work which had been performed or is being performed within the geographical jurisdiction of California, Oregon, and Washington. The preservation of such work cannot be avoided by moving it to Tokyo or anywhere else in the world without resulting in a violation of the Clerks Agreement.

When the Union was informed and became knowledgeable to this work being performed in Salt Lake City, the grievance procedure was properly followed.

The contention of the Employer that the work in question is part of Vessel Planning is rejected by this Arbitrator.

The work of a Vessel Planner is to put containers into specific spots on a vessel not a container yard.

As to the Employers claim that the work in question is covered by the LA-LB Port Supplement and is included under general office work.

This claim is also rejected by this Arbitrator as the LA-LB Port Supplement clearly refers to work performed in the LA-LB Harbor only.

The following two (2) motions were submitted by the Union.

1. Marine Clerks shall be assigned the work inputting into the computer container numbers and yard locations utilizing Mainsail screen "YRD004FW Assign Empties to a vessel."
2. Marine Clerks shall be assigned all Yard Planning duties and functions required by SSA for empty containers presently being done by SSA management including planning and determining what specific empty piles or empties from wheels will be loaded to the vessel.

DECISION:

Union Motions one (1) and two (2) are sustained.



David Miller

Area Arbitrator Southern California

Dated: May 10, 2004