

<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>Non-Marine Clerks Updating And Maintaining Databases For Containers And Chassis</p>	<p>SCAA-0018-2004</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>June 28, 2004</p> <p>Long Beach, California</p>
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The hearing was held at 2:00 P.M. on Monday, June 28, 2004 at 1171 Pier "F" 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: Jacqueline Ferneau
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
I.L.W.U. Local 63

ALSO PRESENT: Art Merrick, LBCT
Anthony Otto, LBCT
Joe Mascola, ILWU Local 63

ISSUE:

Whether LBCT is in violation of the 2002 MOU and Section 1 of the PCCCD by assigning non-marine clerks to update and maintain databases for containers and chassis.

BACKGROUND:

Joint Exhibit No. 6 is accepted on the record and confirms disagreement was reached at the JCLRC meeting of April 7, 2004 as it pertains to this issue.

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

This Arbitrator ordered all parties to be in attendance at the site of the dispute.

Preceding the hearing, a complete tour and demonstration was afforded to all parties.

Questions and comments regarding this issue have been taken into consideration by this Arbitrator.

During the tour and demonstration the following was observed by this Arbitrator.

Containers and chassis that are not in the computer are currently being input by the OCU (Office Clerical Unit).

When a container enters the terminal and it is determined that it does not exist in the database, a OCU person obtains information from the steamship lines website to verify ownership. Once it is determined what line the container represented the OCU person would go back to the LBCT system and input all information regarding the container and/or chassis such as size, type, etc.

At the conclusion of the tour and demonstration the hearing commenced with all parties in attendance.

UNION:

The Union maintains that the record keeping of containers and chassis is work covered in Section 1 of the PCCCD and substantiated by the MOU of 2002.

In support of their position the Union submitted page 188 of the PCCCD which reads:

LETTERS OF UNDERSTANDING

LETTER OF UNDERSTANDING

July 1, 1984

Mr. James R. Herman
President
International Longshoremen's and
Warehousemen's Union
1188 Franklin Street
San Francisco, CA 94104

Letter of Understanding
Sections 1.13 and 1.131 – PCCCD

Dear Mr. Herman:

During the course of the 1984 negotiations the parties discussed the meaning and application of Sections 1.13 and 1.131 of the Agreement and agreed that the intent of those sections is to preserve the traditional work of marine clerks as expressed by the Coast Arbitrator in Award C-21-83 and the Southern California Area Arbitrator in Award SC-31-83.

Very truly yours.

/s/ W.E. Coday

Understanding Confirmed:

/s/ James R. Herman

Date: July 1, 1984

The Union also submitted the following arbitrations to support their case. SC-48-83, C-7-84, SC-27-89, C-7-89, SC-31-83 and C-21-83.

In summary, the Union contends that these arbitrations sustain the position that LBCT is assigning work functions to non-marine clerks that are a contractual obligation of LBCT and should be assigned to marine clerks.

EMPLOYER:

The Employers position is that marine clerks have never performed the work in dispute.

It is asserted by the Employer that the functions in disagreement are work described as general office work.

OPINION:

This Arbitrator is knowledgeable and experienced as to past arbitrations that are pertinent to this issue.

It is not required to burden the discussion or opinion sections of this decision with a concise description of each past arbitration that relates to the Union's position.

However, this Arbitrator will publish the following text to support the decision.

C-7-84 reads:

"The Union has never agreed that other workers could perform this work. If the Union has slept on their rights they have not lost their rights."

"8. The work opportunity in question involves the input of information in to the computer data base under the control of a PMA member, it is within the marine clerk's scope of work to input all data which is required to transact an EIR or in the absence of the EIR the computer data base necessary to receive or deliver containers, chassis or cargo.

PMA contends further that whatever right the Clerks' may have had to the work in question it has lost it because of the length of time during which the work was being performed by others than ILWU Clerks. The fact that the Clerks' Union may have "slept" on its right does not result in a change in the terms of its agreement with PMA. It is noted that in a December 27, 1972 Coast Arbitration, PMA, with reference to matter involved in that

case, stated that part of its position was that "sleeping on one's contractual rights which are clearly and concisely defined in the Master Agreement does not mean that those rights cannot be invoked at any time during the term of the agreement" (Union Exhibit 15)

And in Coast Opinion and Decision C-7-84 (June 4, 1984), the Area Arbitrator in the Award which PMA was seeking to vacate in that case stated, "The Union has never agreed that other workers could perform this work. If the Union has slept on their rights they have not lost their rights." The Coast Arbitrator's Decision in that case adopted that statement.

The preponderance of evidence and past arbitrations clearly establishes that the functions in dispute are recognized as marine clerk work.

It is obvious that technology has replaced work that was previously performed by marine clerks.

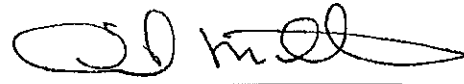
The work in question was duplicated by the OCU and those functions are considered traditional marine clerks' work and shall be assigned to marine clerks.

The Employer can have work duplicated if it so chooses.

However, this does not circumvent the Employer's obligation to adhere to the PCCCD and the 2002 MOU.

DECISION:

The updating and maintaining of databases for containers and chassis shall be assigned to marine clerks.



David Miller
Area Arbitrator Southern California

Dated: August 13, 2004

<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>Non-Marine Clerks Updating And Maintaining Databases For Truck Information</p>	<p>SCAA-0019-2004</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>June 28, 2004</p> <p>Long Beach, California</p>
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The hearing was held at 11:30 A.M. on Monday, June 28, 2004 at 1171 Pier "F" 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: Jacqueline Ferneau
Pacific Maritime Association

FOR THE UNION: Joe Gasperov
I.L.W.U. Local 63

ALSO PRESENT: Art Merrick, LBCT
Anthony Otto, LBCT
Joe Mascola, ILWU Local 63

ISSUE:

Whether LBCT is in violation of the 2002 MOU and Section 1 of the PCCCD by assigning non-marine clerks to update and maintain databases for truck companies.

BACKGROUND:

Joint Exhibit No. 6 is accepted on the record and confirms disagreement was reached at the JCLRC meeting of April 7, 2004 as it pertains to this issue.

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

This Arbitrator ordered all parties to be in attendance at the site of the dispute.

Preceding the hearing, a complete tour and demonstration was afforded to all parties.

Questions and comments regarding this issue have been taken into consideration by this Arbitrator.

During the tour and demonstration the following was observed by this Arbitrator.

Every truck company receiving or delivering cargo from LBCT is inputted into a database by the OCU (Office Clerical Unit). This includes the truck code that represents the company, trucker name, driver's license number, etc. This information translates into the truck code and truck number that is the barcode. All of the required trucker information is inputted by the OCU. Also, witnessed was a fax received by LBCT from a truck company. The OCU inputted this information into screens that were later submitted as Union Exhibits.

At the conclusion of the tour and demonstration the hearing commenced with all parties in attendance.

UNION:

The Union's central position on this issue is that LBCT requires the trucker code and driver code to receive or deliver cargo at its terminal.

In addition, the Union refers to Section 1.251 of the PCCCD which reads:

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.

The Union submitted the following sections of the PCCCD as added support of their position:

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.

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.

On the record, the Union introduced the following Awards C-21-83, C-31-83, SC-48-83 and C-7-84. All of these awards support the position of any information input into a computer which has been recognized as marine clerks work shall continue to be.

EMPLOYER:

The Employer made a claim that this issue is a Section 1 dispute and is not covered in the 2002 MOU.

In addition, the Employer submitted a job description titled: EDP/Clerk Department. This document describes the job function of an OCU person working under an agreement separate and apart from the PCCCD.

The Employer also claimed that the work in question was general office work as described in the Clerks Port Supplement.

OPINION:

This Arbitrator will first address the Employer's position.

On the record it was made clear to the parties that Section 1 is an element of the 2002 MOU.

Section 1 of the PCCCD is imperative to the 2002 MOU and the parties must recognize this aspect when in dispute over technology.

It is important that the parties understand that this Arbitrator is limited strictly to the application and interpretation of the PCCCD as written.

It is quite evident that past arbitrations local and coast support the Union's position.

There is no doubt that the work in question is established in Section 1 of the PCCCD and sustained by past arbitrations.

It is obvious that technology has replaced work that was previously performed by marine clerks.

The work in question was duplicated by the OCU and those functions are considered traditional marine clerks' work and shall be assigned to marine clerks.

The Employer can have work duplicated if it so chooses.

However, this does not circumvent their obligation to adhere to the PCCCD and the 2002 MOU.

DECISION:

The updating and maintaining of databases for truck companies as it relates to receiving and delivering cargo shall be assigned to marine clerks.

A handwritten signature in black ink, appearing to read "D. Miller", written over a horizontal line.

David Miller

Area Arbitrator Southern California

Dated: August 13, 2004

IN ARBITRATION PROCEEDINGS PURSUANT TO THE
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION,

Union,

and

PACIFIC MARITIME ASSOCIATION,

Employers.

Re: SCAA 18, 19-2004

C-03-05
OPINION AND DECISION

of

JOHN KAGEL

Coast Arbitrator

April 25, 2005

Palo Alto, California

APPEARANCES:

For the Union: Ray Ortiz, Jr., ILWU Coast Committee Member, Joseph
Gasperov, Vice President, ILWU Local 63

For the Employers: Thomas Edwards, Director, Contract Administration
and Arbitration, PMA

ISSUES:

Whether Award SCAA-18-2004 and Award SCAA-19-2004, or either of
them, should be confirmed or not confirmed.

BACKGROUND:

Work in Question:

SCAA-18 and 19-2004 were processed pursuant to the November 22, 2002 Memorandum of Understanding Section VI.B. after an OCR system was installed at LBCT. The decisions were prior to Coast Arbitrator decision C-04-04 setting forth Section VI.B procedures including that the Parties are to present all pertinent evidence to the Area Arbitrator for consideration by the CLRC and Coast Arbitrator if the Area Arbitrator decision is appealed.

According to the Union during the consideration of the OCR introduction at LBCT it realized that, in its view, work under its jurisdiction was being performed by the Office Clerical Unit (OCU) and had been performed by it for a number of years. (Tr. 131) This work long preceded the OCR introduction. It was awarded to the Union by the Area Arbitrator in SCAA-18 and -19.

As described, the work in question deals with trucks or containers not already in the terminal's databases. If a steamship line knows that a container coming to the terminal is new to it the line sends a fax to the terminal and information concerning the details of the container such as size, type, and number was put into the terminal database. If a container arrives at the gate and is not identifiable in the database an inquiry is made to the shipping line or a website is checked and the information is then inputted into the database. Similar checks are made for chassis. For drivers a driver might be added ahead of time

and information concerning him or her is put into the database such as name, license number if required, and truck number. If a driver from a new company comes to the gate that too is checked with information coming back to the terminal which is then put into the computer.

This work had been done by OCU personnel. After the Area Arbitrator Awards the OCU employee still checks for the authority of the driver to come into the terminal and whether or not the container is owned by the shipping line. (Tr. 157) The information that the OCU receives from the line is then given to a Marine Clerk who inputs the information into the terminal operating system. (Tr. 160) If the information is in the database before the truck arrives at the gate the OCR system authorizes the entry of the equipment into the terminal. If it is not the driver is directed to go to a trouble window staffed by an OCU employee who queries the shipping or truck line. The information is then passed to another window staffed by a Marine Clerk who formally put an interchange number on the documentation but now in addition enters the information the OCU employee received into the database so the equipment and container can come into the terminal.

Dispute:

As noted the work in question was not directly affected by the OCR introduction but was claimed by the Union to be discovered as being performed

by OCU personnel during the Memorandum of Understanding discussions about the new technology introduction.

Distilled, the dispute is that, in addition to the long-standing practice of such work being done by the OCU, the Employer maintains that the Parties had agreed in 1989 under the local Port Supplement that notwithstanding any Marine Clerk claims to the work that it would nonetheless be performed by the OCU at this terminal.

In C-8-89 the Coast Arbitrator upheld Area Arbitrator Love's decision in SC-27-89 concerning Marine Clerks' jurisdiction with respect to EIR information except for the granting of "inquiries into the computer." As to such work that issue was remanded to the Area Arbitrator to determine:

"What work, if any, that the office workers' work is now assigned to Clerks under the language 'inquiries into the computer.' And he shall determine whether the movement of such work, if any, improperly expands the jurisdiction of Section 1 of the Agreement." (Jt. Ex. 9, Un. Ex. 14, p. 5)

In compliance with that directive Area Arbitrator Love sent his report to the Coast Arbitrator and CLRC members on October 18, 1989. (Er. Ex. A) According to the Employer the local Parties then met and determined that the work involved in this case would remain with the OCU. (*e.g.*, Tr. 171, 175-178)

This contention of the Employer was raised for the first time before the Coast Arbitrator in the Memorandum of Understanding Section VI.B.10 hearing.

As noted as held in case C-04-04 contentions of the Parties not raised before the Area Arbitrator cannot be raised before the CLRC and/or the Coast Arbitrator under that procedure. If a Party finds that there is newly discovered evidence after the Area Arbitrator hearing the appropriate way to seek to introduce it would be to apply to the Area Arbitrator to reopen the original hearing after consideration by the Parties of it first, and in such an application to explain why that information was reasonably unavailable at the original hearing.

In this case, however, the Area Arbitrator hearing was held before the decision in C-04-04. Accordingly, for this case only, where the Parties would not have been aware of that ruling, the issue of whether or not the Parties in 1989 had affirmatively agreed between themselves that the work in question would be for the OCU as opposed to Marine Clerks needs to be decided. The Coast Arbitrator hearing showed that the Union was not prepared to meet the Employer's position that such an agreement had occurred. (Tr. 187)

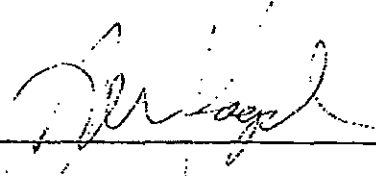
The issue of the Employer that the Union had "slept on its rights" was long ago decided in the latter's favor in jurisdiction claims in general. (Jt. Ex. 9, Un. Ex. 19, Award C-7-96, pps. 5-6) Those particular past decisions have not been abrogated by Memorandum of Understanding Section VI.C.¶1 except as they might relate on their facts to new technologies. Since this case does not on its facts so relate the following decision is made:

DECISION:

1. The issue as to whether or not the Parties reached agreement in 1989 that the work in question at LBCT would be performed by the OCU rather than Marine Clerks is remanded to the Parties who shall meet and discuss the issue. In the event of disagreement that specific issue will be heard by the Area Arbitrator. The Area Arbitrator decision can be appealed to the CLRC on the record before the Area Arbitrator and, if disagreement is reached there, to the Coast Arbitrator for a full and complete hearing in accordance with Memorandum of Understanding VI.B.10 and Case C-04-04.

2. The implementation of the decisions in Cases SCAA-2004-18 and -19 shall remain in effect pending an additional hearing by the Area Arbitrator.

3. This decision is without precedent to Area Arbitrator cases heard under the Memorandum of Understanding after the decision in C-04-04.



Coast Arbitrator