

<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: Is the Union in violation of the PCCCD by allowing Marine Clerks to work more than one (1) shift in a 24-hour period? (Double Back)</p>	<p>SCAA-0004-2015</p> <p>Opinion and Decision</p> <p>Of</p> <p>Ron Mercial, Mark Mascola, Walter Daugherty</p> <p>Area Arbitrator Panel</p> <p>November 10, 2015</p> <p>Long Beach, California</p>
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The hearing was held at 9:00 AM on Monday, November 10, 2015, at 300 Oceangate, Suite 1200, 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:**

Mr. Phillip Tabyanan  
Pacific Maritime Association

**FOR THE UNION:**

Mr. Joe Gasperov  
Local 63

**ALSO PRESENT:**

E. Naefke, PMA  
C. Lindsay, PMA  
L. Swietlikowski, PMA  
S. Fresenius, PMA  
A. Diaz, Local 63  
M. Ponce, Local 63  
Various others

**ISSUE:**

Is it a violation of the PCCCD to allow Marine Clerks to work more than one (1) shift in a twenty-four hour period? (Double Back)

**BACKGROUND:**

The Employers contend that Local 63 has unilaterally enacted a double back provision at the Joint Marine Clerk Dispatch Hall in violation of Section 8.23 of the PCCCD. In support of their position, the Employers cited SCAA-0020-2002 and SCCL-0053-2002.

The Union maintained that no rules of the JPLRC have been violated as alleged by the Employers and that the agreement allowing double back is contained within Section 8.14 of the PCCCD which has been in place for decades. Registered clerks are being dispatched under the "Redline" rule, which has also been in effect for over thirty-years.

The JPLRC met several times, formally and informally, to discuss the Union's intent to allow Marine Clerks that are working in a 30% job category (Chief Supervisor, Super Cargo, Yard Planner, and Rail Planner) to work more than 1 shift in a twenty-four hour period (double back). On June 3, 2015, the Union informed the Employers, as a courtesy, that the Local 63 membership is considering allowing registered Marine Clerks to work more than one shift in a twenty-four hour period. The Employers maintained that such change would require comprehensive discussion and joint agreement. The Employers became aware that the Union implemented a double back provision at the Joint Dispatch Hall during the week of August 24, 2015. The Committee met September 18, 2015, in meeting SCCL-0060-2015 to discuss the issue. The Committee failed to reach formal agreement as to whether a joint agreement is required and the issue was referred to the Arbitration Panel for resolution.

**EMPLOYER POSITION:**

The Employers asserted that the Union does not have the right to allow Marine Clerks to double back as it unilaterally changes jointly agreed upon dispatch rules and procedures.

The Employers presented SCAA-0020-2002, dated June 27, 2002. Former Area Arbitrator, John Pandora, originally heard this arbitration on December 20, 2000. Arbitrator Pandora passed away before he could issue a decision. As a result, his successor, Area Arbitrator Miller, relied on the transcript from December 27, 2000, and the supplemental question-and-answer transcript of June 27, 2002.

Arbitrator Miller established, and the parties agreed that there is no agreement to allow double back by clerks in Local 63. In his decision, Arbitrator Miller found the Clerks' LRC guilty of violating Section 8.43 of the PCCCD and ordered that double backing of chief supervisors in Local 63 cease as of September 1, 2002.

In meeting SCCL-0053-2002, dated August 29, 2002, item 6 reads, *“The Committee will continue to discuss proposals and remedies for double backs, dispatch and marine clerk qualifications.”* This language requires joint agreement to allow Marine Clerks to work more than one shift in a 24-hour period.

In meeting SCCL-0053-2003, dated July 8, 2003, the Union requested that with the exception of the chief supervisor category, all Marine Clerks be permitted to double back. The Employers did not agree with the Union’s proposal and noted that SCAA-0020-2002 has been observed by both parties as the award was neither appealed nor amended and therefore the award remains in effect and must continue to be observed by both parties unless there is joint agreement to modify the decision.

The Union and the Employer have the obligation to assure that all rules are adhered to pursuant to Section 8.11 of the Agreement: *“The dispatching of all clerks shall be through halls maintained and operated jointly by the ILWU and the PMA.”*

Section 8.21: *“The personnel for each dispatching hall, with the exception of dispatchers, shall be determined and appointed by the JPLRC of the port.”*

Section 8.23: *“All personnel of the dispatching hall including Dispatchers, shall be governed by rules and regulations of the Joint Port Labor Relations Committee and shall be removable for cause by the Joint Port Labor Relations Committee.”* Neither party can disregard these sections and unilaterally implement a change that materially changes dispatch processes and procedures.

Section 17.121 and 17.123, the duties of the JPLRC include the maintenance and operation of the dispatching hall and the deciding of questions regarding the rotation of gangs and extra men. The contract does not allow either party to unilaterally assume those duties.

Section 24.2 states, *“All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15”* and *“There will be no unilateral hip pocket working rules or dispatching rules.”*

The Union is in violation of Sections 8, 17, 18, and 24.2 of the PCCCD, and SCAA-0020-2002, June 27, 2002.

The Employers made the following motions:

1. That the panel find Local 63 officers guilty of violating SCAA-0020-2002, Sections 8, 17, 18 and 24.2 of the PCCCD in its decision to unilaterally allow

Marine Clerks to double back to fill thirty percent category work.

2. That the Panel order Local 63 officers to cease and desist the practice of double backs for any Marine Clerk work at the Joint Dispatch Hall until the Clerks' JPLRC meet and consider current factors and attempt mutual agreement on the issue.

#### UNION POSITION:

The Union contended that joint agreement for double back was reached and introduced into the Master Agreement many years ago and that no further joint agreement is required to allow double back. The JPLRC has no rule in place that limits a clerk to working only one shift in a 24-hour period.

Section 8.14 states, "*Clerks not on the registered list shall not be dispatched from the dispatching hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.*" Neither the Arbitrator nor the JPLRC have the authority to negate this section of the Contract.

Clerks working more than one (1) shift in a 24-hour period are dispatched under the long-standing jointly agreed to process of being dispatched on the redline after all clerks checked in on that shift have been offered a job and prior to the job being dispatched to a nonregistered clerk. This dispatch process has been the practice for over 30 years and all of these rules remain unchanged. The only reason that Local 63 clerks were not allowed to double back previously was because of an internal Union rule.

The issue in SCAA-0020-2002 is completely different from the issue today. The sole issue was whether Section 8.43 was being violated. Section 8.43 states, "*There shall be no favoritism or discrimination in the hiring or dispatching or employment of any clerk qualified and eligible under the Agreement.*" Distilled, the issue for many years up until the arbitration was that steady employees, not Hall, were being allowed to work from the second shift to the third shift. The jobs were not dispatched through the Joint Dispatch Hall, however were directly assigned by specific Employers. Hall clerks did not get this job opportunity, as it was an arrangement between a steady clerk and their employer.

Arbitrator Miller found this process violated Section 8.43 and ordered that the practice be discontinued. A clerk seeking to work more than one shift in a 24-hour period today is through the Joint Dispatch Hall. Whether an individual is a Steady or Hall clerk, they will be dispatched by established rules, low man out, no comebacks, one-day only, dispatched and based on qualifications.

There is no claim by the Employers that there is favoritism or discrimination with the current method utilized to dispatch marine clerks seeking to work more than one shift in a 24-hour period.

OPINION:

Although neither Party presented transcripts from the 2000 and 2002 hearings, the issue arbitrated is quite clear. The issue resulting in SCAA-0020-2002 dealt solely with steady chief supervisors being assigned by their employer to double back from the second shift to the third shift. This direct assignment bypassed the Joint Dispatch Hall thus depriving a work opportunity for qualified Marine Clerks working out of the Joint Dispatch Hall. This was confirmed by witness Mike Podue's unrefuted testimony. This practice was determined by Arbitrator Miller to be a violation of Section 8.43 of the PCCCD and such assignments were ordered to be discontinued as of September 1, 2002.

The Parties were ordered to meet, consider current factors and attempt mutual agreement on that issue. In meeting SCCL-0053-2002, dated August 29, 2002, the Parties met as ordered and agreed to eighteen proposals in regards to **chief** supervisors. This Panel reviewed all eighteen proposals and must give them all equal weight. Item 6 states, *"The Committee will continue to discuss proposals and remedies for double backs, dispatch and marine clerk qualifications."*

Item 18 states, *"This agreement shall be implemented on a trial basis for 180 days."*

It is important to note that the issue before the Arbitrator in SCAA-0020-2002 was, *"Is there a violation of Section 8.43 of the PCCCD as alleged by the Union?"* The decision therefore is confined to the elimination of the discriminatory act. The Employers presented no evidence or argument to the panel that the dispatching of clerks to double back was discriminatory in any manner. Furthermore, the ruling was strictly for "Chief Supervisors" and cannot be expanded by this panel to include Supercargoes/Bulk/Ship (Occ. Code 104), Supercargo/Other/Ship (Occ. Code 105), Rail Planners(Occ. Code 122) and Yard Planners (occ. Code 123).

Three joint exhibits were presented; SCCL-0023-2015, dated June 3, 2015; SCCL-0027-2015, dated June 23, 2015, and SCCL-0060-2015, dated September 18, 2015. The Employers' position in each of these meetings was that allowing clerks to double back required further discussions regarding dispatch processes and procedures. The Union maintained that Section 8.14 was binding and that no Joint Dispatch rules have been changed or violated.

The Union contends that Section 8.14 allows Marine Clerks to work more than one shift in a 24-hour period and 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. The fact that the Union had an internal rule prohibiting double back, does not make it a joint agreement.

The Union presented eight witnesses, which the panel agreed presented credible testimony. Six of the aforementioned witnesses testified to the double back dispatching practices of the other sixteen ports covered under the Master Agreement:

1. Frank Riley (Local 34) - San Francisco/Oakland, Stockton and Sacramento.
2. Dana Jones, Jr. (Local 40) - Portland, Coos Bay, Newport, Astoria, Vancouver and Longview.
3. Ryan Whitman (Local 23) - Tacoma
4. Chris Romischer (Local 52) - Seattle, Bellingham, Grays Harbor and Aberdeen
5. Warren Shelton (Local 46) - Port Hueneme
6. Anthony Soniga (Local 29) - San Diego

It is unrefuted, that none of the other ports has a joint agreement specific to double back, including Port Hueneme and San Diego, which are within the Southern California Area. Also, in record, is the fact that a joint agreement is in effect for Casual longshore workers in which Locals 13, 63 and PMA are parties. This agreement prohibits double backing by casuals. The absence of any other agreements allowing for double back on the West Coast as well as a specific agreement prohibiting double back for casual longshore workers can only mean that the working of multiple shifts is not a violation of the PCCCD.

Section 8.14 of the PCCCD states, "*Clerks not on the registered list shall not be dispatched from the dispatching hall or employed by any employer while there is any man on the registered list qualified, ready and willing to do the work.*" This language is clear and contains no limitations to the number of shifts a registered clerk can work within a twenty-four hour period.

It is unrefuted that sixteen (16) other ports covered under the PCCCD, including other ports within the Southern California Area, have interpreted and applied Section 8.14 to allow double backs.

Current Dispatcher, Joe Mascola, appeared as a witness and testified to the fact that no joint dispatch rules have been altered or violated to accommodate double back. He provided further testimony to a long-standing joint dispatch rule referred to as the "Redline". This rule ensures that registered Marine Clerks that have not met the established check-in requirements are afforded a work opportunity prior to the

dispatching of such jobs to any man not on the registered list. This rule has been in existence for well over thirty years and it is under this joint rule that individuals are being dispatched to double back. This testimony went unrefuted. The Employers provided no evidence that any joint dispatch rule had been violated or changed unilaterally; they solely relied upon SCAA-0020-2002 and SCCL-0053-2002.

Section 8.23: *“All personnel of the dispatching hall including Dispatchers, shall be governed by rules and regulations of the Joint Port Labor Relations Committee and shall be removable for cause by the Joint Port Labor Relations Committee.”* The Employer has the right to observe dispatch, yet failed to provide any specific examples in which any dispatcher failed to follow any of the rules/regulations as set forth by the JPLRC or added any new rules.

Item #3 of SCAA-0020-2002 states, *“Both the Union and the Employer shall not use this decision as a subterfuge.”*

Section 17.52 of the PCCCD states; *“Powers of arbitrators shall be limited strictly to the application and interpretation of the Agreement as written. The arbitrators shall have jurisdiction to decide any and all disputes arising under the Agreement including cases dealing with resumption or continuation of work.”*

Section 24.2 of the PCCD states, *“All joint working and dispatching rules shall remain in effect unless changed pursuant to Section 15. All other restrictions on the employer or clerks that are in conflict with the provisions of this Agreement are null and void. There will be no unilateral “hip pocket” working or dispatching rules.”*

This Panel is limited to the agreement as written and cannot rely on SCAA-0020-2002, or SCCL-0053-2002 to abrogate the clear and concise language contained within Section 8.14 of the PCCCD. No evidence was presented that the Union had either unilaterally changed any Joint Dispatch rules or added any unilateral “hip pocket” working or dispatching rules. The Employers failed to provide any evidence that the method of dispatch implemented by the Union violates Section 8.43 of the PCCCD, which was the sole issue adjudicated in arbitration award SCAA-0020-2002. Furthermore, it is without question that this panel has no authority to force the parties to meet as requested by the Employers’.

DECISION:

- 1) The dispatching of Marine Clerks to more than one job in a twenty-four hour period is not a violation of the PCCCD.
- 2) Changes to the Joint Dispatch rules shall be made only by mutual agreement.
- 3) The Employers' motions are denied.

Dated December 31, 2015

/s/ Ron Merial  
Ron Merial  
Area Arbitrator Southern California

/s/ Mark Mascola  
Mark Mascola  
Area Arbitrator Southern California

/s/ Walter Daugherty  
Walter Daugherty  
Area Arbitrator Southern California