

<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 violation of posting procedures regarding appointment to a steady position at Fenix Marine Services (EC-224-2018)</p>	<p>SCAA-0015-2019</p> <p>Opinion and Decision</p> <p>Of</p> <p>Southern California Area Arbitration Panel</p> <p>Walter Daugherty, Chair Person Mark Mascola Ron Merical</p> <p>July 9, 2019</p> <p>San Pedro, California</p>
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The hearing was held at 9:00 a.m. on Tuesday, July 9, 2019, at 350 W. 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 UNION: Joe Gasperov, ILWU Local 63

FOR THE EMPLOYER: Shanika Gunsekera, Pacific Maritime Association
Phillip Tabyanan, Pacific Maritime Association

ALSO PRESENT:

- M. Ponce, ILWU Local 63
- R. Maynez, ILWU Local 63
- B. Candella, Pacific Maritime Association
- E. Naefke, FMS
- M. Grant, SSA
- M. Bundy, Pacific Maritime Association
- L. Swietlikowski, Pacific Maritime Association
- C. O'Neal, Pacific Maritime Association

ISSUE:

Did the Officers of Local 63 violate the posting procedures outlined in Arbitration Award SCAA-0023-1997 when they blocked Mr. Mike Smith from beginning steady employment at Fenix Marine Services as outlined in EC-224-2018?

BACKGROUND:

On December 26, 2018, Fenix Marine Services (“FMS”) submitted a request to hire Mike Smith, #36046, (“Smith”) as a steady 30% Rail Planner. By email dated December 26, 2018, Joe Gasperov of ILWU Local 63 advised FMS that they would not be able to hire Smith as a steady 30% Rail Planner because he was not on the 30% qualified list and individuals who were on this list had applied for the position and must be given first preference (Employer Ex. 4).

The Employer filed an Employer Complaint, designated EC-0224-2018, on January 2, 2019 alleging that the Union had prevented the hiring of a steady rail planner because he was not on the 30% qualified list and that since no complaint was filed, the Union had utilized self-help (Employer Ex. 1). This complaint was considered at the January 31, 2019 Special LRC Meeting at which disagreement was reached and the matter was referred to the Southern California Area Arbitration Panel (“Panel”) for resolution.

Area Arbitration Award SC-23-97 established the following procedures for the hiring of a steady clerk:

"DECISION

- 1. Prior to filling a steady clerk position, a notice must be posted for the position to be filled. Simultaneously, a copy of the notice shall be delivered to the Secretary of Local 63. Said notice shall have its own identification number and shall clearly state the particular job or jobs being filled, the member company (or its subsidiary, affiliate, or division) filling the job, how many persons are to be hired, special requirements, if any, and whether the job is for the night or day shift.*
- 2. Clerks desiring to apply for said openings shall complete an application form. The employee must identify the notice to which he or she is referring by date, company, job and identification number.*
- 3. A member company may not hire a steady clerk until the notice has been posted for at least ten (10) calendar days for regular steady clerk positions and for at least five (5) calendar days for CFS utility steady positions as required by the Container Freight Station Supplement Agreement currently in effect. An Employer must fill steady clerk positions from applications submitted.*
- 4. A member company can continue to receive applications relating to a specific notice up to thirty (30) calendar days from the date the notice initially was posted. This decision must be conveyed to the Joint Clerks Labor Relations Committee (JCLRC).*

5. *A steady clerk position may only be filled from applications received during the thirty (30) day maximum period. Any application received after the thirty (30) day posting period cannot be considered.*
6. *Any member company must make its hiring decision within forty (40) days after the notice originally was posted. If not, it must repost for the job.*
7. *Nothing herein shall prevent an employer from hiring at any time after the five (5) days period or the ten (10) day period and before the 40th day after the original posting.*
8. *If an Employer desires to modify the requirements of a posted job, it must post a new notice.*
9. *The applicant selected and the Joint Labor Relations Committee shall be notified within ten (10) days of the decision to hire.*
10. *Once a job has been filled or the time limit has expired, the notice shall be removed as soon thereafter as practicable.*
11. *If the person hired does not commence work within sixty (60) days of the initial posting, the company shall post a new notice for the position.*
12. *Prior to receiving an application, the clerk must sign for the application.*
13. *The application must then be submitted to the designated Employer in person.*
14. *Applications shall be as standard or uniform as possible as per Item Nos. 1 and 2 of this award.*
15. *This award shall be implemented by Saturday, June 7, 1997.”*

EMPLOYER POSITION:

By blocking Smith's hiring as a steady 30% Rail Planner the Union has resorted to self-help and violated the steady hiring procedures outlined in Arbitration Award SC-23-97. If the Union had an issue with Smith's hiring for the steady position in question, the Union was obligated to allow Smith to fill the position and challenge his steady hiring through the contractual grievance procedures as required by Section 17.15 of the PCCCD. Previous decisions issued by this Panel, including SCAA-0019-2017, SCAA-0002-2018, and SCAA-0006-2018, have made it clear that neither party to the PCCCD is free to waive any of the contractual grievance steps and resort to self-help. The Union's reliance on the Panel's decision in SCAA-0017-2016 is misplaced as that decision is irrelevant in that subsequent to its issuance the Panel issued the three referenced decisions setting forth the parties' obligations to adhere to the grievance procedure.

The Employer has proven that the Union violated Section 17.15 of the PCCCD by blocking Smith from the vacant steady position at FMS. The Employer made the following motion: That the Panel

find that the Union failed to follow the proper grievance machinery as outlined in the PCCCD when they blocked the hiring of Mike Smith, #36046, at Fenix Marine Services.

UNION POSITION:

Arbitration Award SC-23-97 does not allow the Employer to hire whomever they want for a vacant steady position. Item 7 of that award relied on by the Employer is properly read to mean that nothing contained in the award itself prohibits the Employer from hiring a steady employee and no evidence was presented that the Union violated this paragraph or any other portion of SC-23-97. The Union's action in blocking Smith's appointment to the steady 30% Rail Planner position at FMS was consistent with its actions taken in SCAA-0017-2016, where the Panel concluded, among other things, that the Union had not violated PCCCD Section 17.15 by its refusal to allow the Employer to hire a non-key qualified clerk for a steady position.

The Union requested that the Panel deny the Employer's motion and find that the Union had not violated the posting procedures outlined in SC 23-97.

DISCUSSION:

The Panel's authority and jurisdiction are defined and circumscribed by the submitted issue statement. The issue before the Panel is limited to the dispute whether the Officers of Local 63 violated the posting procedures outlined in Arbitration Award SC 23-97 when they blocked Smith from beginning steady employment at FMS. In such regard, SC 23-97 includes some 15 numbered items that set forth the posting procedures, application process, and timelines relevant to the hiring of a steady clerk. SC 23-97 is silent as to the qualifications required to fill a steady position and its provisions do not inform the manner by which an applicant is to be selected for a steady position.

Item 7 of SC 23-97 cited by the Employer in support of its position that the Union's actions at issue violated its posting procedures states, "*Nothing herein shall prevent an employer from hiring at any time after the five (5) days period or the ten (10) day period and before the 40th day after the original posting*" (emphasis added). The inclusion of the term "nothing herein" in the context of the quoted language clearly manifests the intent that the various provisions of SC 23-97 themselves cannot be read to prevent an employer from hiring a steady clerk within its stated time lines. SC 23-97, however, includes no language expressly prohibiting the Union from blocking a clerk from beginning steady employment, nor can any such prohibition be inferred in the Panel's reading of its provisions.

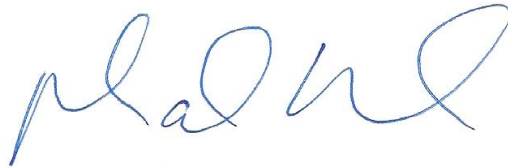
For the reasons set forth above, the Panel's review and consideration of the provisions and requirements of SC 23-97 compel the conclusion that its posting procedures were not violated when the Union blocked Smith from beginning steady employment at FMS. Since this conclusion is dispositive of the specific issue before the Panel, the other arguments and contentions proffered by the parties should and will not be addressed here. Therefore, the following decision is issued.

DECISION:


1. The Officers of Local 63 did not violate the posting procedures outlined in Arbitration Award SCAA-0023-1997 when they blocked Mr. Mike Smith from beginning steady employment at Fenix Marine Services as outlined in EC-224-2018.
2. The Employer's motion is denied.



Walter Daugherty
Southern California Area Arbitrator



Mark Mascola
Southern California Area Arbitrator



Ron Merial
Southern California Area Arbitrator

Dated: October 21, 2019