

COAST LONGSHORE DIVISION

INTERNATIONAL LONGSHORE & WAREHOUSE UNION

Robert McEllrath

Ray Familathe

Ray Ortiz, Jr.

Leal Sundet

April 14, 2010

TO: All Clerks' Locals

RE: C-02-2010

Brothers and Sisters:

Enclosed is a copy of Coast Arbitration Award C-02-10. The decision provides important guidance as to the contractual limitations on Superintendents at marine terminal facilities.

Coast Arbitration Award C-02-10 states that Superintendents can observe an operation either physically on the spot or through the use of technology. However, C-02-2010 reaffirms that in the day-to-day interaction with Marine Clerks, Superintendents are limited contractually as to how they oversee the work of Marine Clerks. The decision also suggests what we need to do is effectively pursue grievances in this context.

Most significantly, C-02-10 states that, while Superintendents can observe an operation and relay what they observe to Marine Clerks, problem solving is our work. On this point, Coast Arbitrator Kagel stated that Superintendents may call problems or concerns to the attention of Marine Clerks but that "determining what do to next is for Marine Clerks" (C-02-10, page 4). Moreover, "If the Marine Clerks have questions they can ask them but in their normal work they would be required to determine what to do about the situation and issue the appropriate directions to resolve it" (C-2-10, pages 4-5). Coast Arbitrator Kagel also noted in C-02-10 that the Employers recognize this limitation: "The Employers acknowledge that Superintendents bypassing Marine Clerks and giving directions themselves violate the PCCCD since such direction is reserved to Marine Clerks" (C-02-10, page 2). Thus, C-02-10 draws a line between the work of Superintendents and Marine Clerks, and we need to ensure that Superintendents do not cross that line into the traditional "brain work" that is the function of a Marine Clerk.

One of the Union's contentions in C-02-10 dealt with the pervasive assignment of Superintendents and its impact on Marine Clerks. However, the specific facts of this "micromanaging" claim were not sufficiently documented in the Coast Arbitrator's mind. On that point, Coast Arbitrator Kagel provided some guidance for future grievances: "Issues concerning whether the Employer has pervasively assigned such a large number of Superintendents to solely check computer screens with the result that their observations do not give Marine Clerks the opportunity to do their normal work and thus displacing them requires a much more specific record as to specific dates and situations" (C-2-10, page 5). Anyone seeking



Memo to all Clerk Locals
April 14, 2010


to press similar “micromanaging” claims must document what is going on, including “specific dates and situations,” so that there is sufficient evidence to support the claim.

Finally, note that the Coast Arbitrator kept his decision in C-02-10 narrow: “This decision deals solely with whether Superintendents can use technology and inform Marine Clerks of their observations which information the Marine Clerks may use in doing their work Nothing in this decision deals with specific claims, if any, that the Employer’s employment and pervasive assignment of Superintendents otherwise violates or does not violate the PCCCD” (C-2-10, page 5). Thus, C-02-10, by order of the Coast Arbitrator, is a limited decision.

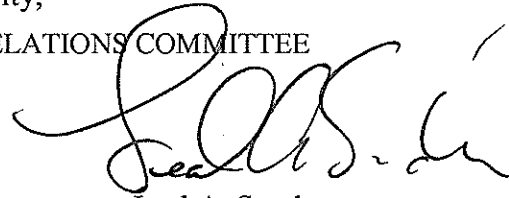
Please review the enclosed award, and let us know if you have any questions.

In Solidarity,

THE ILWU COAST LABOR RELATIONS COMMITTEE



Ray Ortiz, Jr.
Coast Committeeman



Leal A. Sundet
Coast Committeeman

Enclosure

ac:opeiu29/afl-cio

IN ARBITRATION PROCEEDINGS PURSUANT TO SECTION B.10
 OF THE FRAMEWORK FOR SPECIAL AGREEMENT ON APPLICATION
 OF TECHNOLOGIES AND PRESERVATION OF MARINE CLERK
 JURISDICTION OF THE 2008-2014 ILWU-PMA
 PACIFIC COAST CLERKS' CONTRACT DOCUMENT

C-02-2010

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,	}	
	}	OPINION and DECISION
	}	
Union,	}	of
and	}	
	}	JOHN KAGEL
	}	Coast Arbitrator
PACIFIC MARITIME ASSOCIATION,	}	
	}	April 6, 2010
Employers.	}	
	}	Palo Alto, California
<u>Re: SCAA-1-10 Superintendents</u>	}	

APPEARANCES:

For the Union: Leal Sundet, Ray Ortiz, Coast Labor Relations Committee

For the Employer: Rich Marzano, Coast Director, Contract Administration and Arbitration

ISSUE:

Whether SCAA-1-10, issue 2, should be affirmed or vacated?

BACKGROUND:

Superintendents at PAG have screens that through computer programs allow them to view what is occurring in the yard and at the vessel or vessels. In doing so Superintendents can detect irregularities which they report to Marine Clerks as requiring

PMA - LR

correction. In some instances they have bypassed Marine Clerks and given direction themselves for such corrections. Generally, Superintendents have three computer screens, one of which may be used for email (Jt. Ex. 2 p. 230); Marine Clerks have two or three screens. Both use the same computer programs to view the yard and vessel operations.

The Employers acknowledge that Superintendents bypassing Marine Clerks and giving directions themselves violate the PCCCD since such direction is reserved to Marine Clerks. (E.g. Jt. Ex. 2, p. 68) The Union maintains that the Superintendents viewing the screens and calling Marine Clerks' attention to irregularities the Superintendents believe they see amount to "micro-managing" that usurps the "brainwork" that Marine Clerks are required to bring to the job to direct the flow of cargo—"their historic role of determining operational solutions in the face of unanticipated mishaps." (Tr. 15)

DISCUSSION:

November 2002 Letter of Understanding:

In November 2002 the Parties' agreed in a Letter of Understanding (LOU):

"During the course of the ILWU-PMA 2002 Negotiations the Parties reached agreement on various provisions and procedures regarding the implementation of technologies and their impact on marine clerks under the PCCCD. Such provisions and procedures are set forth in the Framework For Special Agreement On Application Of Technologies and Preservation Of Marine Clerk Jurisdiction (referred to as the 'Framework'). The purpose of this letter is to confirm our understanding that nothing in the Framework reduces or expands the established Contract language and practices regarding management's right as to the direction of marine clerk supervisors by management, the determining of

overall business operations, and the setting of business and operational priorities.” (Jt. Ex. 2, Er. Ex. 5)

After the introduction of technology Marine Clerks perform work by viewing programs on two or three screens that allow them to see what is going on in the yard and to give directions as necessary. Superintendents can view the same programs and if they also see situations requiring that directions need to be given they advise Marine Clerks of the situation for the Marine Clerks.

The Area Arbitrator wrote:

“...PAG has created a subterfuge by allowing superintendents to mimic the work functions of Section 1 of the PCCCD that gives such work checking/monitoring to marine clerks. It is further concluded by me that PAG has not introduced technology that eliminates the need for a clerk to monitor/check each cargo move on a computer screen.

The argument of the Employer that they have the right to direct and supervise clerks is rejected based on the history of such wording and how it has been recognized by the Parties. It is the long standing practice within the industry for Employers to set parameters and give direction to clerks on how work shall commence, be modified during a shift and how such work shall be concluded. I find the actions of the Employer at WBCT to be disingenuous in allowing superintendents to become the ‘extra clerk or an ‘extra set of eyes’ to monitor/check each and every movement of cargo under the pretext of supervision and direction....” (Jt. Ex. 2)

The evidence presented at the Coast level as well as in the Area transcript introduced at the Coast shows that the historic practice of Management direction to Marine Clerks has not been confined to directions at the beginning and end of the shift or to mid-shift programmatic modifications. Superintendents would oversee the operation from where they were and if “something didn’t look right” would call the Supercargo and

ask about what was observed, impliedly seeking correction if required, through Marine Clerk direction. (Tr. 73-74, 129, Jt. Ex. 2 p. 167) Accordingly, the record and the Agreement support that Superintendents can observe the operation either physically on the spot or by technology as the LOU allows and to carry out their functions as they did before the introduction of technology. To hold otherwise negates the Parties' agreement that "practices regarding management's right as to the direction of marine clerk supervisors by management" would continue after the introduction of technology.

Marine Clerk Work:

While Superintendents can observe the operation and relay what they observe to Marine Clerks the practices preserved in the LOU for the latter is what to do with the Superintendents' observations. An example in the Coast record was that a Superintendent observes trucks in the exception area. After advising the Marine Clerk of that fact the Superintendent then identified why the trucks were there because of custom cans on their backs and then tells the Marine Clerk to take them to a particular top handler and what row to deck them in. (Tr. 98, 106-107)

The LOU draws the line between the work of Superintendents and that of the Marine Clerks. The above example is not a shift in the day's operational plan. It is an incident occurring within the overall plan that was implemented by Management. In that example a Superintendent asking Marine Clerks why trucks were in the exception area is within the practices of Superintendents preserved to them by the LOU. But determining what to do next is for Marine Clerks. If the Marine Clerks have questions they can ask

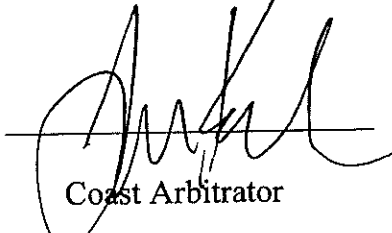
them but in their normal work they would be required to determine what to do about the situation and issue the appropriate directions to resolve it. (See Tr. 24, 41)

“Micro-Managing:”

The issue raised in this case involved what Superintendents can do with respect to technology as opposed to what work is reserved solely for Marine Clerks. Issues concerning whether the Employer has pervasively assigned such a large number of Superintendents to solely check computer screens with the result that their observations do not give Marine Clerks the opportunity to do their normal work and thus displacing them requires a much more specific record as to specific dates and situations. General testimony was introduced concerning whether there might, or might not, be such a situation. (E.g. Jt. Ex. 2, pps. 51, 53, 54, 81, 91, 231) This decision deals solely with whether Superintendents can use technology and inform Marine Clerks of their observations which information the Marine Clerks may use in doing their work.

DECISION:

1. Awards SCAA-1-2010 and SCAA-2-2010, the latter dealing with the implementation of SCAA-1-2010, are vacated.
2. Nothing in this decision deals with specific claims, if any, that the Employer's employment and pervasive assignment of Superintendents otherwise violates or does not violate the PCCCD.


Coast Arbitrator