IN THE MATTER OF A CONTROVERSY BETWEEN PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHORE AND WAREHOUSE UNION LOCAL 63 Re: Alleged violation of Section (A)(4)(E)(ii) of the Technology Framework as it pertains to Section 1 of the PCCCD by APMT	SCAA-0012-2007 OPINION AND DECISION of David Miller Area Arbitrator April 2, 2007 Long Beach, California

The hearing was held at 10:05A.M. on Monday, April 2, 2007 at Pier 400, 2500 Navy Way, Terminal Island, 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.

APPERANCES:

FOR THE EMPLOYERS:	Jacquie Ferneau Pacific Maritime Association
FOR THE UNION:	Joe Gasperov ILWU Local 63
ALSO PRESENT:	K. Chen APMT J. Otis APMT M. Grant SSAT R. Clark PMA R. Marzano PMA M. Harding SSAT E. Bohm MTC

BACKGROUND:

The parties are in agreement that the issue is properly before the Area Arbitrator. All procedures described in the PCCCD have been attained in a timely manner. Therefore such issue shall be decided through [The Framework] as it pertains to an alleged Section 1 violation.

ISSUE:

Whether APMT is in violation of the PCCCD by assigning the job function of inputting information on rail containers that do not EDI (OCR) when entering the terminal.

DISCUSSION:

UNION:

The Union's contention is that rail cars enter the APM Terminal and a Marine Clerk will then physically verify the containers. Any container that does not correspond to the EDI List (OCR) is noted by the clerk and handed to management who then gives this information to a non-clerk to input.

The Union submitted Sections 1.251, 1.131, 1.21, 1.22, and past Arbitrations SC-31-83, C-21-83, SC-48-83, and SC-18-04 to support their contention.

EMPLOYER:

The Employer states that the work in question has not been performed by Marine Clerks historically. In addition the Employer presented that the work in question is protected by the port supplement and is described as general office work. It is also claimed by the Employer that such work is contained within the Office Clerical Unit's Agreement.

Within Joint Exhibit No.4 (C-20-06) the Employers are reliant upon the following text:

We're putting aside for the moment at least, any claim that the union was, 'sleeping on its rights' or not sleeping on its rights. We're just saying this is an issue which the Union did not know about, could not reasonably have known about and brings it up there.

The issue of sleeping on its rights is a fact-based situation involved in each case as to whether or not the Union knew or should have known about the claim or whether or not there was some legitimate excuse, even if it knew about it, to have not brought it up, [as to] which none of that is going to be decided here.

OPINION:

It is with conviction that the wording by Coast Arbitrator Kagel contained within C-20-06 shall be utilized as a guiding principal in the instant dispute.

The record has been carefully reviewed and this Arbitrator is convinced that the issue that must be determined in attainment of a final decision is when did the Union become aware or reasonably should have known about the work in question.

On the record the Union claims that only through the procedures of [The Framework] during 2006 were such work discovered. At that time the Union then began the grievance procedure as per the PCCCD.

The Employer through witnesses has proven that the Union and Employer have had numerous meetings since 2002 as it pertains to the current terminal. At these meetings the issue of procedure in regards to Rail Operations was discussed in detail.

It is also established that the Union had an agreement with APM in regards to rail planning and the job functions at the previous terminal (Pier "J") Long Beach. In that agreement the parties agreed to assign rail planning to Marine Clerks

This agreement was reached in 1993 approximately nine (9) years before such work was recognized within the 2002 Master Agreement.

The position of the Employer that the work in question is within the 1953 Port Supplement is illogical and the Employer is cognizant of the fact that contract language of the PCCCD has superseded such Supplement. Therefore such argument shall not be considered.

The Office Clerical Unit (OCU) Agreement shall be disregarded in attainment of a final decision. The Employers are reminded that all decisions are based on the Master Agreement and shall be confined to and extend only to, the particular issue in dispute.

In summary it is objectively reasonable to be convinced that the Union should have known about the job function in question. There is no evidence to prove that APMT was deceitful in any way as it relates to assigning rail planning to the Union. To the contrary APMT as the record substantiates has been forthright and up-front with the Union in regards to rail planning.

This decision is not an edict to sustain the Employer's position that the work in question is that of someone other than a Marine Clerk, but is based on the reasoning that the Union was totally aware or should have been of someone other than a Marine Clerk performing job functions that they consider to be theirs.

The parties must take notice that this decision is based on the facts of this case only. The guidance given in C-20-06 shall be utilized on a case by case basis and shall not set precedent.

DECISION:

APMT is found not guilty of violating Section 1 of the PCCCD. The Union's claim is hereby denied.

/s/ David Miller
David Miller
Area Arbitrator Southern California

Dated: May 1, 2007

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 2002-2008 ILWU-PMA
PACIFIC COAST CLERKS' CONTRACT DOCUMENT

C-09-2007

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,	]	OPINION and DECISION
Union,	]	of
and	]	
	]	JOHN KAGEL
	]	Arbitrator
PACIFIC MARITIME ASSOCIATION,	]	
Employers.	]	October 4, 2007
	]	Palo Alto, California
Re: Rail planning reconciliation SCAA-0012-2007	]	

APPEARANCES:

For the Union: Leal Sundet, Coast Labor Relations Committee Member, San Francisco, CA

For the Employer: Rich Marzano, Director, Contract Administration and Arbitration, San Francisco, CA

ISSUE:

The issue as stated by the Employers is: "Whether or not APM Terminals is in violation of [Technology Framework Memorandum of Understanding] Section

[VI.]A.4.E.ii by having non-Marine clerks, specifically ILWU office clerical unit [OCU] employees, update the inbound rail consist data that is not properly EDI'd into APM's terminal operating system." (Tr. 32)

BACKGROUND:

Work in Question:

OCR recognizes containers shipped into the Terminal by rail. Discrepancies in that data are detected by Marine Clerks. If the exceptions are related to the OCR equipment itself Marine Clerks resolve them. But if the exception is not related to OCR equipment the exceptions are noted by the Marine Clerks and reported by them to Management or to OCU employees. They then track down how to resolve the discrepancies by calling the customer or shipper or by other means (Tr. 60), which is work not claimed by the Union (Tr. 62-63), and then enter the corrections into the operating system. (Tr. 10, 49, 57-62) Marine Clerks maintain that the entry of corrections into the operating system after the OCU determines what the corrections are is work to be performed by them under the Framework MOU.

According to the Union that work is preserved to them by the Framework's language and it is entitled to assert that right as reconciliation of data necessary for the flow of cargo from rail to the yard or vessel.

The Employers maintain that that work is not required by the Agreement's language; that it has historically been performed by the OCU to which the Union has

acceded; and that in any event the Union has slept on its rights and thus lost the right to claim the work.

AGREEMENT PROVISION:

> "e) In exchange for the Employers' right to introduce new technologies, the following work and functions shall be assigned to marine clerks at all facilities covered by the PCL&CA...
>
> ii) Rail Planning Operations
>
> Marine clerks shall be assigned rail planner duties and functions generally identified as directing and executing the flow of cargo, planning and determining the particular place or area on a rail car 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." (Jt. Ex. 1, Framework MOU §VI.A.4.e.ii)

DISCUSSION:

Reconciliation and Flow of Cargo:

The Union agrees that work concerning booking of cargo is not covered by its jurisdictional claims under the Framework. (Tr. 126) But executing the flow of cargo is, and the Employers obliged themselves in 4.ii that Marine Clerks would reconcile all documents required for that execution. Here, similar to the finding in Award C-10-04 involving yard planning, the identification of cargo on the terminal not detected by the

OCR equipment is required to flow that cargo, for without proper identification the unidentified containers can not, or should not, flow anywhere. (Tr. 55, 60) The documentation, even if electronic, generated by the OCR needs to be reconciled with the situation on the ground and that work has been explicitly ceded to the Marine Clerks by VI.E.4.ii. To hold otherwise would be to write that wording out of the provision which an arbitrator has no authority to do. Given the Parties' agreement that bargaining history is barred from arbitration (Tr. 43-44), arbitrators are limited in their interpretation of the Framework to its language. (Jt. Ex. 1, Secs. 17.52, 17.62) A common definition of reconciliation includes "achievement of consistency or compatibility: The making of two or more apparently conflicting things consistent or compatible." (*Encarta* dictionary) The entry of the corrections reconciles the incorrect OCR scan with the true state of the cargo to allow its flow.

Historic Work:

The contention of the Employers that the work has been historically done by the OCU is not relevant even though Marine Clerks performed rail planning work before the Tech Framework was adopted. (Tr. 50-51) Paraphrasing Award C-10-04 concerning yard planning:

> "However, such inputting was prior to the MOU which as it refers to [rail] planning was a new expansion of Marine Clerks' work and the MOU takes precedence over that history if the work in question falls within §IV.A.E.e.[ii]." (Un. Ex. 7)

Further, as many cases have held, to the extent the Employers seek to rely on contractual arrangements with other bargaining units, arbitrators under the PCCCD are, as the Area Arbitrator held, bound to interpret the latter only.

Sleeping on Rights:

The Employers maintain that the Union knew of the OCU's doing the work in question both before and after the 2002 Tech Framework and made no assertion for such work. The Area Arbitrator relied on a general statement in a Coast bench decision concerning sleeping on rights as being a fact question that had to be decided in each case. (Award C-20-2006, Un. Ex. 1) In doing so, however, that statement did not modify what was held in Award C-03-05, and the two must be read in conjunction with each other:

> "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 [citing Award C-7-96 and others]. 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: ..."

In this case there were meetings between Clerks and Management as to what was going to happen with respect to the move from one pier to another but the bulk, if not all, of those occurred before the 2002 Memorandum of Understanding. (Tr. 75, 78, Jt. Ex. 2 p. 115-116) It is accepted in this case that thereafter the Union specifically learned of the practice to be utilized under the OCR system during the Framework discovery process concerning that system and it pressed its claim from then on. (Tr. 23,

Jt. Ex. 9) Those discussions were much more specific then a general description relied on by the Employers. (Jt. Ex. 2, Er. Ex. 9 p. 10) Accordingly, its jurisdictional claim is properly brought in this case.

DECISION:

The decision of SCAA-0012-2007 is vacated. The work claimed by the Union herein is to be performed by Bargaining Unit personnel.

Coast Arbitrator