

<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>Issue No. 2: Truck Driver input of information Into electronic reader to send to Transtainer Operators.</p> <p>Issue No. 4: Transtainer Operator performing Marine Clerk work.</p>	<p>SCAA-0004-2005</p> <p>OPINION AND DECISION</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>February 3, 2005</p> <p>Wilmington, California</p>
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The hearing was held at 9:10 AM. on Thursday, February 3, 2005 at 920 West Harry Bridges Boulevard, Wilmington, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. A Certified Short-hand 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  
ILWU Local 63

ALSO PRESENT:

- A. Diaz, Local 63
- J. Hermenegildo, Local 63
- E. Gonzales, Local 13
- J. Kavanaugh, Local 63
- N. Tuck, Local 13
- D. Arian, Local 13
- N. Uruburu, TraPac
- T. Harrison, Local 63
- F. Pisano, TraPac
- P. Feldhus, ITS
- L. Bear, ITS
- M. Harding, SSAT
- D. Hoshide, TraPac
- S. Axelson, TraPac
- R. Clark, PMA

ISSUE NO. 2:

Whether TraPac Terminal is in violation of the MOU and Section 1 of the PCCCD by allowing truck drivers to convey information to longshore transtainer operators by inserting a buck slip into an electronic reader.

ISSUE NO. 4:

Whether TraPac Terminal is in violation of the MOU and Section 1 of the PCCCD by allowing transtainer operators to view a profile of container numbers and the containers highlighted in red to be delivered.

BACKGROUND:

Union Exhibit No. 2 was entered and confirms disagreement was reached at the JCLRC Meeting of April 7, 2004 as it pertains to this issue.

The parties agreed to refer these issues 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 of the issue was afforded to all parties.

During the demonstration this Arbitrator observed the following.

Each truck driver stopped at the ingate and after communicating with a marine clerk received a buck slip. The driver then proceeded to a pedestal in the yard and inserted the buck slip into a pedestal and advanced to where the container was located. When the driver inserted the buck slip it would change the screen in the longshore operator cab from yellow to red.

It is important to note that the parties agreed on the record that any reference to the demonstration has not been misinterpreted or misrepresented at this hearing.

UNION:

The Union contends in Issue No. 2 that a truck driver is performing the work of marine clerks by communicating instructions to longshoreman by use of a buck slip and the pedestal in the yard.

The claim by the Union is that it is historically the function of a clerk to direct a longshoreman as it pertains to the flow of cargo.

On Issue No. 4, the position of the Union is that a longshoreman cannot perform the function of verifying a container number on his screen with the container number on the container about to be delivered to the driver.

The Union submitted several past arbitrations supporting their position on both issues.

It is not necessary to include the text from those arbitrations as this Arbitrator has carefully reviewed and considered the substance of those decisions.

EMPLOYER:

The Employer's position is that the issues in dispute are the result of the Agreement on the Framework for Technology as described in Section 6 of the MOU.

On Issue No. 2, the Employer's position is that the yard pedestal is merely replacing a marine clerk. After the slip is inserted, directions are then transmitted to the longshoreman.

As to Issue No. 4, the Employers maintain that this procedure is no different than that of a clerk when he gives a slip to a UTR driver, and if the UTR driver encounters a problem, they are to report back to the clerk.

OPINION:

The opinion section of this award will be extensive and is intended to give the parties a guidance of authority as it relates to technology issues.

Union Exhibit No. 2 reads:

1. Security Guards directing truck drivers to the appropriate transtainer row;
2. Truckers inserting buck slip into an electronic reader which sends electronic messages to transtainer operator as to what container to deliver;
3. Truckers spotting cargo in the transtainer row. Truckers continue to exit their trucks and look for their container in the row;
4. Transtainer operators performing marine clerk work. The computer viewed by the operator has a profile of all the container numbers that are in the pile and the containers to be delivered are highlighted in red. This allows the operator to perform marine clerk work.
5. Signalmen performing marine clerk work. Since the clerk has been removed, this is the only person on the ground and is now the person who interacts with the truck driver if there is a problem. A rover clerk is only called after the fact.

The above text was taken from CLRC Meeting No. 07-04.

Only Issues No. 2 and No. 4 will be addressed in the opinion section of this award.

Issues No. 3 and No. 5 are not technology disputes and will only be addressed in the decision.

The Union dropped issue No.1.

The rationale for the decision in regards to Issue No. 2 is based on the following:

Truck drivers do not have any contractual rule to communicate in any format with longshoremen as it pertains to the movement of cargo.

What is required to correct this violation is that communication between the transtainer operator and clerk must be direct.

How this direct communication is achieved is at the discretion of the Employer.

In regards to this issue, the Employer may introduce new technology but must keep in mind that it is a subterfuge to violate clerk jurisdiction by utilizing truck drivers to perform the functions described.

The following Trapac Terminal rules apply as it pertains to Issue No. 4:

Crane operator procedures for transtainer delivery

1. Verify that the container # on your screen in red matches the container in the actual pile in the location on your screen.
2. If the container # in red on your screen does not match the container in the bay, then –
3. DO NOT perform further moves within the bay and CALL the TCC Clerk IMMEDIATELY.

It is the opinion of this Arbitrator that the above rules do not violate the MOU as written.

However, when the Employer chooses to operate as depicted in Issue No. 2, it is obvious that a violation of Issue No. 4 will then occur.

This Arbitrator will decide issue No. 4 as it was written in CLRC Meeting No. 07-04 and presented at this hearing.

DECISION:

Issue No. 2 – TraPac is found in violation of the MOU and Section 1 of the PCCCD by allowing truckers to convey and direct the movement of cargo to longshoremen by using an electronic reader.

Issue No. 3 – Is hereby remanded to the JPLRC to be processed through Section 17 of the PCCCD.

Issue No. 4 – TraPac is found not guilty of this issue as presented. This decision on Issue No. 4 is not precedent setting and is limited to the instant issue only.

Issue No. 5 – Is hereby remanded to the JPLRC to be processed through Section 17 of the PCCCD.

The Area Arbitrator shall retain jurisdiction as it pertains to implementation of this award.

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/s/ David Miller  
David Miller  
Area Arbitrator Southern California

Dated: March 15, 2005

<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: Implementation of Award SCAA-0004-2005</p>	<p>SCAA-0008-2005</p> <p>BENCH AWARD</p> <p>Of</p> <p>David Miller Area Arbitrator</p> <p>March 23, 2005</p> <p>Wilmington, California</p>
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The hearing was held at 2:55 PM on Wednesday, March 23, 2005 at 920 West Harry Bridges Boulevard, Wilmington, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and testimonies of witnesses. There was no transcript of the hearing.

APPEARANCES:

FOR THE EMPLOYERS: Jacqueline Ferneau  
Pacific Maritime Association

FOR THE UNION: Joe Gasperov  
ILWU Local 63

ALSO PRESENT: A. Diaz, Local 63  
J. Mascola, Local 63  
D. Clark, PMA  
S. Axelson, TraPac  
N. Uruburu, TraPac

ISSUES:

Whether TraPac Terminal has implemented Award SCAA-0004-2005 with the intention of this Arbitrator's decision.

DISCUSSION:

The Union maintains that TraPac has not properly implemented the award.

What the Union contends is that TraPac has failed to provide for a clerk to have complete control of the flow of cargo as it proceeds from the gate to the transtainer.

The Employer's position is outlined and is contained in the following letter:

March 23, 2005

VIA FACSIMILE

Mr. Adrian Diaz  
President  
ILWU Local 63  
350 West 5th Street, Suite 200  
San Pedro, California 90731

Dear Mr. Diaz:

TraPac has received and reviewed Arbitration Ruling SCAA 0004-2005, dated February 3, 2005 and will implement the following change to the transloader operation.

Based on the arbitrator's decision in regard to issue #2, beginning Monday March 21, 2005, the insertion of buck slips into the electronic reader will no longer change the containers to be delivered from yellow to red. All containers will remain yellow on the transloader operator's screen until the TCC clerk processes the transactions by activating a command button (P7) at their console. This activation by the TCC clerk will then change any yellow containers awaiting delivery to red on the transloader operator's screen.

If you have any questions, please feel free to contact TraPac.

Sincerely,

Trans Pacific Container Service Corporation

Daryl J. Hoshida  
Operations Manager

DJH:all

cc: Mr. Tim Kennedy, Pacific Maritime Association  
Ms. Jacquie Ferneau, Pacific Maritime Association  
Mr. David Miller, Area Arbitrator Southern California

*Trans Pacific Container Service Corporation*  
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P.O. Box 1170 • Wilmington, California 90740-1170  
(310) 830-2900 • FAX (310) 513 7420

OPINION:

This Arbitrator is not persuaded by the Employer's attempt to comply with the award.

The Employer has failed to state a claim upon which relief may be granted. The following motion was submitted by the Union and reads:

A Marine Clerk(s), in the TCC, will have direct communication with each trucker picking up a container at the transtainer(s). A clerk(s) will control each trucker as he/she approaches the pedestal and will determine what container is to be delivered and what spot it is located in. A clerk(s) will then open the gate arm and direct that trucker to the appropriate location and trans. A clerk(s) will then communicate directly with the trans operator as to what container needs to be delivered in what location.

After the Employers asked several questions it was agreed by the parties that the above motion could be implemented beginning March 28, 2005.

DECISION:

1. The Union's motion is hereby granted.
2. TraPac is found to be in violation of Section 17.57 of the PCCCD and with not complying with SCAA-0004-2005.
3. The Area Arbitrator shall retain jurisdiction as it pertains to implementation of SCAA-0004-2005.

/s/ David Miller  
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David Miller  
Area Arbitrator Southern California

Dated: March 25, 2005