

IN THE MATTER OF SUMMARY DISPOSITION 05-07

BETWEEN:

British Columbia Maritime Employers' Association

(the "Association")

AND:

International Longshore and Warehouse and Warehouse Union-Canada

(the "Union")

***Re: Pacific Coast Terminals Manning Arbitration
(Bulk Liquid Loading)***

JOB ARBITRATOR:

John Steeves

COUNSEL:

Tom Roper Q.C., for the
Association

Bruce Laughton Q.C., for
the Union

DATE OF HEARING:

March 19, 2007

PLACE OF HEARING:

Port Moody, B.C.

DATE OF AWARD:

March 22, 2007

A. INTRODUCTION

1. This is a decision about whether Pacific Coast Terminals can reduce the manning at its bulk liquid loading facility because they installed a new system for loading bulk liquids. There is also an issue as to whether this grievance is arbitrable as a result of a previous decision of the Industry Arbitrator.

2. I am a job arbitrator appointed pursuant to Article 6 of the collective agreement. Article 6.04(a)(i) states, among other things, that I “may as deemed necessary or expedient, investigate, or act upon personal knowledge and experience, or upon information furnished by either or both of the Parties or by any other persons believed” by me “to be qualified to give such information”.

3. Article 6.02(c) states that I have jurisdiction, on application by either party, to deal with disputes relating to any matter “under Manning”.

B. BACKGROUND

4. Pacific Coast Terminals is operated by Pacific Coast Terminals Co. Ltd. (PCT), a member of the Association. The Union represents employees of PCT, through Local 500.

5. PCT is a bulk terminal, located in Port Moody B.C., and it handles bulk commodities such as sulphur and ethylene glycol. This award arises from the bulk liquid loading of ethylene glycol. It is stored in tanks and then pumped into seagoing vessels when they arrive at the PCT terminal.

6. For a number of years PCT used two flexible hoses to load vessels at the dock. Mr. Larry Stephenson, a person with extensive experience loading with the flexible hoses, explained how they were used. Judging from photographs that were entered in evidence the hoses were each about one foot in diameter with larger flanges on each end. They

were a permanent part of the bulk liquid loading dock, beside an elevated control shack and a collection of other controls, pipes and valves. When a vessel arrived at the dock a HIAB crane would lift the hoses up to a manifold on the ship's deck. Ropes were also used to guide the hoses into place. The vessel did not have to be berthed exactly in line with the flexible hoses but nor could the manifold be far away from the hoses.

7. Once the hoses were in place four bolts on each flange and two cover plates were removed. The flanges were then bolted to the manifold on the ship, using eight bolts for each (a flange has eight holes but only four are used to bolt on the cover plate). Sometimes a "persuader" was used to line up the holes on the flange with the holes on the manifold. A charge of nitrogen was then put into the hoses and the seals of the flanges at the manifold were tested for leaks by applying a soap and water spray and watching for bubbles. If there was a proper seal then a "foot" of sample product (ethylene glycol) was sent into the holds on the vessel. A test was then done to ensure that the product was not contaminated. If the test was satisfactory then loading commenced.

8. Throughout the loading the HIAB crane held the hoses up with a sling that, at times, had to be adjusted for the tide. Also, there were small dollies on the dock to hold the hoses so they could move with the tide. The concern was that the hose might fall between the dock and the vessel and get crushed; the evidence was that this had never happened.

9. Once the loading was complete a "blanket" of nitrogen was pumped into the holds and a disconnection procedure took place. This involved the HIAB crane lifting the hoses so they could drain into a tank on the dock (after they had been disconnected from the manifold on the vessel and the cover plates had been replaced). The HIAB crane, with the assistance of ropes on the hoses, then lowered the hoses back onto the dock.

10. The manning of the connecting, loading and disconnecting of the flexible hoses involved a four-person crew. For the connection, one person would operate the HIAB crane, one would handle the rope attached to the hoses and two would be on the deck of

the vessel. The rope would be handed up to the deck when the hoses were in a certain position. Once the loading began one person stayed at the dock to monitor the loading and another was available as a back up and for relief. This is a “hotseat relief” operation, meaning that the loading is uninterrupted and the crew is also paid an additional fifteen minutes per shift to accommodate shift changes. For the disconnection of the hoses a four-person crew was also used.

11. On January 26, 2006 PCT changed the method of loading bulk liquids at their loading dock. The flexible hoses and the HIAB crane were removed and a counter-weighted, rigid pipe system was installed. The Manager of Operations for PCT, Mr. Jim Gibney, explained that PCT was looking for “state of the art equipment” that addressed two risks associated with the flexible hoses. One was the risk of spillage into the sea and the other was the potential for injury to employees. Mr. Gibney stated that PCT believed that the new system “would remove these risks”.

12. Photographs and a video were introduced by PCT and I was taken to observe the rigid pipe loading operation (there was no vessel at the terminal at the time). When there is no vessel at the dock the rigid pipe system is a tall, slender steel structure. Two wheels used by the counterweights and the counterweights themselves visibly stand out. When the rigid pipe system is in use on a vessel it unfolds into three pieces: a long piece that extends over the vessel, a middle section that also moves and a bottom section that stays fixed to the dock. A vessel has to be berthed with its manifold very close to the rigid pipe loader because the rigid pipe does not have as much lateral movement as the flexible hoses.

13. Two features of the rigid pipe system are relied on by PCT as being significant. The first is that it is easily moveable, as demonstrated by a video that showed two people manipulating the rigid pipe with little difficulty. The other feature is that the head or the end that connects to the manifold on the ship, is very different from the flanges on the flexible hoses. It is different because it is counter-balanced so it can be placed at the manifold more easily and, once placed, it will stay in place by itself. It is also easier

because there are no bolts to connect and disconnect; instead, there are four large cam-like grips that are turned into place.

14. PCT wants to use a three-person crew with the rigid pipe system, instead of the four-person crew they used for the flexible hose system. The Union opposes this change.

15. Mr. Gibney explained that reducing the crew to three was justified because the connection of the rigid pipe is easier. There is no longer any need for two people on the deck of the vessel. One person can be on the deck while the other two open up the rigid pipe and rotate it into place. Once it is in position one of the members of the crew can then walk onto the vessel and help with the connection. The actual connection to the manifold on the vessel is “very easy” because there is now no need to connect eight bolts. During the loading phase there is no risk of the rigid pipe falling between the vessel and the dock, precisely because it is rigid. With regards to the disconnection of the rigid pipe, the procedures are reversed and it is easier than the flexible hoses because the rigid pipe swings away because of the counter weights.

16. Based on his observations, Mr. Gibney estimated that the time spent on both connection and disconnection of the rigid pipe was about half that of the flexible hoses. The figures he used were that it took twenty minutes to half an hour to connect the flexible hose and about seven to ten minutes to connect the rigid pipe. To disconnect, he estimated it took twenty to twenty-five minutes with the flexible hose and fifteen minutes with the rigid pipe. Another witness, Mr. Beau Storey, Assistant Operations Manager for PCT, agreed that there were more steps for the disconnect phase with the rigid pipe because it could not be lifted up and drained like the flexible hose. However, he also stated that this was offset in time by fewer crane related tasks.

17. Another issue in this case relates to what are described as “pumping-only shifts”. These are shifts where, for example, a vessel is connected and loading commences on one shift, loading continues through the next, second shift, and then the loading is completed and the vessel is disconnected in the last, third shift. In this example, the second shift is a pumping-only shift, meaning that only loading takes place and there is

no connecting or disconnecting. The pumping equipment tracks volume and it is accurate enough to predict within minutes when a load is complete or when a tank has to be changed so PCT and its employees know at the time the pipe is connected when the loading will be completed.

18. Mr. Gibney explained that in the 1980s and 1990s the vessels arriving at PCT were smaller and the entire connecting, loading and disconnecting would usually take place over two shifts. However, recently vessels have become larger and there are more pumping-only shifts. He estimated that about fifty to fifty-five percent of the shifts now are pumping-only.

19. The manning for pumping-only shifts is also an issue. PCT wants to change it to a two-person crew and the Union opposes any change to the existing four-person crew.

C. COLLECTIVE AGREEMENT

20. Article 23 is titled "Manning" and it states,

23.01 When determining the manning of any operation covered by this agreement the following rules will apply:

- (a) Maintenance of Safety;
- (b) Avoidance of undue individual work burden;
- (c) Prohibition of individual speed-up;
- (d) All the employees necessary;
- (e) No unnecessary employees.

23.02 When the Employer intends to implement changes in existing manning or when new operations are introduced and corresponding manning established by the Employer, the Association agrees to consult with the Union prior to such changes. After consultation, the change(s) may proceed without prejudice to the rights of either party under the Collective Agreement.

Due regard will be given to Article 23, Section 23.01, during the consultation process.

21. The parties agree there is no issue about the maintenance of safety in this case.

22. The parties have also negotiated a series of documents collected in the Black Book, which is part of the collective agreement. Document 10 of the Black Book specifically addresses bulk liquid loading at PCT. Mr. Ken Catton, Vice President and General Manager of PCT, explained that this document was a result of the start of the tank farm in 1984. Among other things it is agreed that the tank farm and the liquid bulk shipping operation are considered as a single operation. Then paragraph 7 states, "Manning – as per the collective agreement, i.e. all the men necessary, no unnecessary men". As discussed below, the Industry Arbitrator has concluded that this means that Article 23 of the collective agreement was incorporated by reference into Document 10.

23. There is also Document 10A in the Black Book. This is a letter signed by the Association and the Union and dated December 2, 1991 that states Document 10 will be "renewed without changes to the existing wording". It also describes the revised manning for the bulk liquid facility as follows (this is the current manning),

A. Rail car unloading styrene and glycol:

Manning

3 operators – up to 20 railcars
4 operators – 21 to 39 railcars
5 operators – 40 to 53 railcars

B. Vessel loading simultaneously with railcar unloading:

2 operators in addition to the required manning
set forth in item A (above).

C. Vessel loading with no railcar unloading taking place:

4 operators

D. MUNROE AWARD OF JANUARY 27, 2007

24. Part of the history of this grievance is an award by the Industry Arbitrator, Don Munroe Q.C., dated January 27, 2007.

25. In part, the event that gave rise to the Munroe award was a letter dated March 9, 2006 from the Association to the President of Local 500 of the Union. That letter purported to set out an agreement between the Association and Local 500 about the manning of the loading arm at the bulk liquid loading facility at PCT. It noted “technological change” and it was explained to me that this change refers to the change from the flexible hoses to the rigid pipe, described above. The new manning arrangements tracked the form of Document 10A in the Black book with some changes in numbers (there was no change to A., unloading of railcars)

- B. Vessel loading simultaneously with railcar unloading:
1 operator in addition to the required manning set forth in item A (above).
- C. Vessel loading with no railcar unloading taking place:
3 (three) operators

The March 9, 2006 letter also set a new category, D, to address pumping-only shifts,

- D. Vessel loading with no connect or disconnect will be 2 (two) operators.

26. The Operations Manager for PCT and the President of Local 500 of the Union signed the March 9, 2006 letter. However, a few days after this, Local 500 of the Union advised PCT that the new manning arrangement described in the letter was “null and void”. PCT and the Association insisted they had a binding agreement and the issue came before arbitrator Munroe.

27. In his award arbitrator Munroe noted that the Black Book was part of the collective agreement between the Association and ILWU-Canada, and it was understood that any amendment of the Black Book requires the approval of the Joint Industry Labour Relations Committee (JILRC). No local of the Union could amend the agreement. Arbitrator Munroe found that letter of March 9, 2006 was of no force and effect because it called for an amendment to the Black Book on the basis of the agreement of one local of the Union, rather than the JILRC.

28. The Munroe award also considered an interpretive issue related to Article 23 and Black Book Documents 10 and 10A.

29. The questions posed by the arbitrator on this issue were as follows,

Suppose that the March 9 agreement ... had not been reached between the BCMEA/PCT and Local 500? Would PCT have been entitled under Article 23 of the collective agreement to proceed with manning changes in relation to its new shiploader equipment/operation, subject to later challenge by the union (including by arbitration, of course) under Articles 23.01 (a)-(e)? Or, did [Black Book] No. 10A effectively give the union a veto over any manning changes at PCT's vessel loading operations, such that no manning changes could be made except by negotiated agreement? Those are the two competing positions. (page 14).

30. In addressing this issue arbitrator Munroe considered the effect of a "material change in circumstances", such as the "new and different shiploader operation". He restated the question before him as: "Was it intended that the manning levels in [Black Book] No. 10A would nevertheless be inviolate unless the parties agreed otherwise?" (page 16).

31. He concluded that Article 23 was not "altogether displaced" by Black Book Document 10A regardless of any material change in circumstances that might later occur (page 17). He also noted that Black Book Document 10A expressly carried forward ("without change") Document 10 which incorporated Article 23. On this basis he could not agree with the Union that Document 10A was intended to override Article 23. Further, "I find a common intention that either party to [Black Book] No. 10A was

entitled to have resort to Article 23 of the collective agreement in the event of a material change of circumstances” (page 18).

E. DECISION AND REASONS

32. There are two issues to be decided,

- (a) Does the Munroe award apply to make the grievance before me inarbitrable, as submitted by the Association?
- (b) If the answer to (a) is no, then applying the test from the Munroe award, does the introduction of the rigid pipe for loading bulk liquids amount to a material change in circumstances that triggers the operation of Article 23 and permits PCT to make manning changes?

(a) Is this grievance arbitrable?

33. The Association submits that this grievance is not arbitrable as a result of the Munroe award. They reason that while arbitrator Munroe decided that the March 9, 2006 letter was not a valid amendment of the collective agreement the document nonetheless remained a valid settlement of the grievance. The Union disagrees and submits that the Munroe award cannot be used by the Association to revive an agreement that arbitrator Munroe declared of no force and effect.

34. I am not persuaded that this grievance is inarbitrable as a result of the Munroe award. In my view that award decided two issues: whether the March 9, 2006 letter was “binding and enforceable according to its terms” (page 1) and the interpretative issue under Article 23. I acknowledge that the subject matter of the letter was the “technological change” from the flexible hoses to the rigid pipe loading system. However, the issue before me involves an application of the interpretative point developed by arbitrator Munroe – whether there has been a material change of circumstances. Put another way, the Munroe award did not decide whether PCT could

reduce the manning of its bulk liquid loading facility. The parties are now asking me to decide that issue.

(b) Has there been a material change of circumstances with the introduction of the rigid pipe loading?

35. I adopt the material change of circumstances test because the Munroe award stated, “absent material changes in circumstances the agreements contained in [Black Book] No. 10A were intended to be honoured” (page 16). This would seem to be a different test than the one in Article 23 that permits members of the Association to implement manning changes in certain circumstances, none of which include a material change in circumstances. It is nonetheless grounded in Article 23 since that article is referenced in Document 10 which is then renewed without change by Document 10A. As the Munroe award put it, Document 10A “amounts to an agreement between the parties thereto about the proper application of Article 23 to the then existing circumstances” (page 17). Hence the logic of looking at a material change in circumstances to justify an increase or decrease in manning at PCT.

36. It is important to recognize that any change in circumstances does not justify a change in manning levels set out in Document 10A of the Black Book. What is required is a “material” change of circumstances.

37. In this case the rigid pipe loading operation still loads bulk liquids, as did the flexible hoses. Procedures involving charging the line, using a foot for sampling and using a blanket of nitrogen at the end remain the same. It is still involves a “hotseat” shift. However, that is not the end of the matter.

38. With the rigid pipe loading there is no need for the HIAB crane or someone to operate it. The rigid pipe system is mechanical with the counter-weights as opposed to hydraulic with the HIAB. The use of ropes to move the rigid pipe is reduced considerably by the system of counter weights. There is one large pipe that swivels and fastens using a cam-lock-like mechanism rather than two flanges with the flexible hoses.

The connection and disconnection procedures are different. The rigid pipe is faster and simpler because there is no need to remove the covering plate and then fasten the two hoses with eight bolts each. Disconnection takes less time than with the flexible hoses and the rigid pipe requires different draining procedures because it cannot be drained by lifting upright. Finally, the rigid pipe with the counter-weights adjusts by itself to changes with the tide whereas with the flexible hoses the HIAB would have to move the sling. There was a suggestion that the current manning was necessary to move the rigid pipe if it froze up but it had not done so in the past year.

39. Many of these differences are material in the sense they are relevant and of consequence to manning questions for connecting and disconnecting because of the simpler and faster procedures with the rigid pipe. The evidence is clear that connecting and disconnecting is different in important, consequential and material ways. I conclude that there is a material change in circumstances with the introduction of the rigid pipe loading of bulk liquids. This permits PCT to make the changes to Document 10A of the Black Book they seek with regards to shifts where the rigid pipe is connected or disconnected.

40. There remains the question of pumping-only shifts. These are currently manned under item C of Document 10A. PCT seeks a separate and new category D., for pumping-only shifts, with a lower level of manning than in C, from four to two people. The Union opposes this reduction.

41. As above, the evidence is that pumping-only shifts have existed for some time. However, their frequency has recently increased significantly. What is not clear is how there has been a material change of circumstances with regards to pumping-only shifts. The history demonstrates that PCT has used a four-person crew for monitoring pumping-only shifts from the beginning. Further, there has been virtually no change to the monitoring duties as a result of the introduction of the rigid pipe. I appreciate that PCT and perhaps the Union may not have appreciated pumping-only shifts when Document 10 and Document 10A were agreed in 1984 and 1991, respectively. However,

that is a bargaining matter and not one that demonstrates a material change in circumstances.

42. I conclude that there has been no material change of circumstances with respect to pumping-only shifts.

F. CONCLUSION

43. As above, a material change of circumstances has been demonstrated with regards to shifts involving the connection and disconnection of the rigid pipe bulk liquid loading system compared to the flexible hose system. However, a material change of circumstances has not been demonstrated with regards to pumping-only shifts.

44. Therefore, the following changes to Document 10A result (pumping-only shifts are under C),

- A. [no change]
- B. Vessel loading simultaneously with railcar unloading:
1 (one) operator in addition to the required manning set forth in item A (above).
- C. Vessel loading with no railcar unloading taking place:
3 (three) operators

It is so awarded.

Dated this 22nd day of March, 2007, in the City of Burnaby, Province of British Columbia.

John Steeves