

IN THE MATTER OF SUMMARY DISPOSITION 2008-10

BETWEEN

**BRITISH COLUMBIA MARITIME EMPLOYERS  
ASSOCIATION**  
(The Association)

AND

**INTERNATIONAL LONGSHORE AND WAREHOUSE  
UNION, CANADIAN AREA**  
(The Union)

Job Arbitrator:	Ronald S. Keras
Counsel for the Association:	Ms. Eleanor (Ellie) Marynuik
Counsel for the Union:	Mr. Rob Ashton
Witnesses	
Local 500:	Mr. Kim Nielsen
Pacific Coast Terminals:	Mr. Clayton Smith
In Attendance	
ILWU Business Agent:	Mr. Glenn McGee
Pacific Coast Terminals:	Mr. Wade Leslie
Pacific Coast Terminals:	Mr. Peter Prince-Wright
Hearing:	September 27, 2008
Decision Published:	October 3, 2008

## I

The Union sought an order, pursuant to Article 7.03 of the Collective Agreement, that the Staker Reclaimer at Pacific Coast Terminals (PCT) is unsafe and that the Job Arbitrator direct PCT to create a safe work environment by ensuring Local 500 members have control of the Staker Reclaimer at all times.

The Association issue was: ILWU and Local 500 are in violation of Article 7.01 due to an illegal work stoppage. The Association sought an Arbitral order directing Local 500 and its members to cease and desist from the work stoppage. The Association also sought an Arbitral finding that the Union and certain of its members are on an illegal strike contrary to the provisions of Article 7.01 of the Collective Agreement. The Association also advised that it reserved its rights to seek damages.

## II

Union witness and Regular Work Force Millwright Mr. Kim Nielsen testified to the situation which gave rise to his decision to act pursuant to Article 7.03. He was concerned with the fact that an offsite contractor had adjusted the speed of the Stakrake and was of the view that without on site communications the operation was unsafe. Mr. Nielsen's examination included a site visit.

Association witness Mr. Clayton Smith testified that on September 27<sup>th</sup>, 2008 at about 18:15 the Stakrake scale was not working and that he telephoned the contractor, enCompass, and instructed them to reduce the maximum speed of the

Stakrake by 50%. This meant the Stakrake was moving at approximately one half the speed of a normal walking pace or slightly slower.

### III

The Union argued that having an off-site contractor with the ability to adjust the speed of the Stakrake produced an unsafe environment for employees on site. Mr. Ashton argued that the uncertainty of the individual with such access was unsafe. The Union asked how did anyone know the condition of the individual on a Saturday evening, he could be drinking or impaired at the same time he is adjusting the speed of the Stakrake.

The Association argued that the Union members were on a deliberate strike. Ms. Marynuik pointed out that if there was a true safety issue the Union would have raised it earlier in their telephone conversations with her and not some three hours later as it was only after an adjournment was granted on the related work jurisdiction issue that the Union raised a safety concern. The Association also argued that at half the speed of a walking pace there is no issue of safety.

The Union advised that the only reason they did not raise the safety issue in earlier conversations with the Association is that they anticipated a hearing at the time concerning the work jurisdiction issue and intended to raise the safety issue at the hearing and that it was the adjournment of the work jurisdiction issue that resulted in the unresolved safety issue.

## IV

Article 7.01 and 7.03 of the Collective Agreement read as follows:

- 7.01 The Union agrees that during the term of this Agreement there will be no slowdown nor strike, stoppage of work, cessation of work, or refusal to work or to continue to work.
- 7.03 Unless an employee in good faith believes that to perform work under particular circumstances would endanger health or safety, the employee may not refuse to work. A question of health or safety arising on the job shall be investigated immediately and if not settled shall forthwith be dealt with by a representative of the Union and a representative of the Association who shall endeavour to settle the question. If no settlement is reached, either Party may refer the question to the Arbitrator for a Summary Disposition or decision as provided under Article 6 of this Agreement. The Union pledges in good faith that the provisions of this Section 7.03 will not be used as a means to circumvent the provisions of Section 7.01 of this Article.

On a careful review of the evidence, including the site visit and the submissions of the parties, I find the following:

The Union had the onus of proof in regard to the order they sought pursuant to Article 7.03. The site visit was helpful with respect to understanding the details of the Union's issue. On most industrial work sites there is always a possibility of an accident or injury. The PCT site is no exception, in particular with moving equipment like the Stakrake.

The contractor, enCompass, received PCT's instructions to adjust the speed of the Stakrake specifically to reduce the speed. Providing there is adequate

communications from the Foreman or management when there is an out of the ordinary Stakrake speed adjustment, I am unable to conclude that there is an issue of endangerment.

I understand the Association's suspicions with respect to the employee's refusal to work and agree that at first blush it appears that the safety issue was an afterthought. The difficulty for an Arbitrator in concluding that there was a violation of Article 7.01 is that the allegation must be proven with clear evidence, in particular when the situation arises in a circumstance where there is an anomalous adjustment to the Stakrake. With respect to the Association's position regarding the safety of the operation, I find that the disputed operation of the Stakrake was not unsafe.

In the result, employees are directed to return to work immediately.

It is so ordered.

I thank counsel for their helpful submissions.

Dated in Vancouver, British Columbia this 3<sup>rd</sup> Day of October 2008.



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Ronald S. Keras  
Job Arbitrator

File: 497