

IN THE MATTER OF SUMMARY DISPOSITION 2009-05

BETWEEN

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

AND

**INTERNATIONAL LONGSHORE AND WAREHOUSE  
UNION-CANADA**  
(The Union)

Job Arbitrator:	Ronald S. Keras
Counsel for the Association:	Mr. Brian Whitfield
Counsel for the Union:	Mr. Mike Rondpré
Witnesses:	
Pacific Coast Terminals:	Mr. Gordon Sims
Local 500:	Mr. Gordie Westrand
Local 500:	Mr. Larry Stephenson
Local 500:	Mr. Terry Stephenson
In Attendance:	
Pacific Coast Terminals:	Mr. Wade Leslie
Pacific Coast Terminals:	Mr. Beau Storey
Pacific Coast Terminals:	Mr. Ken Catton
Hearing:	May 7, 2009 May 13, 2009
Decision Published:	May 27, 2009

## I

The Association brought the issue of staffing levels to arbitration as Pacific Coast Terminals (PCT) was planning to reduce the number of employees required for their bulk liquid rail car unloading based on a “material change” in the operation. The material change quote is in reference to industry decisions which will be reviewed via the April 25, 2007 decision in *Re B. C. Maritime Employer’s Association and International Longshore and Warehouse Union – Canada*, Industry Arbitrator, Donald R. Munroe, Q.C. in which Arbitrator Munroe considered the relationship between Article 23.01, Black Book (BB) Document #10 and Black Book Document #10A.

The Union’s position was that to reduce crew levels would contravene the manning provisions of Black Book Document #10A as there has been no reduction in workload. The Union put the Association on notice, with the intention of avoiding an estoppel, with respect to all other manning issues such as rail crews and checking.

Black Book Document #10A in the main reads:

Re: Pacific Coast Terminals Bulk Liquid Facility  
Planned Expansion of Operations

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This will confirm our agreement relative to the above cited matter at a joint meeting held at the BCMEA offices on December 2, 1991.

The Black Book Document re: Bulk Liquid Operations – Pacific Coast Terminals will be renewed by the parties without change to the existing wording and this agreement will be jointly recommended to

the Joint Industry Labour Relations Committee for ratification and attachment thereto.

Concurrent with the commencement of operation of the planned expansion of this bulk liquid facility providing for the addition of two (2) 60,000 bbl glycol tanks and increased rail capacity and unloading facilities to accommodate the unloading of twenty-seven (27) additional rail cars, the revised manning for the bulk liquid facility is agreed upon as follows:

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

In order to facilitate uninterrupted operations, meal periods will be worked on a regular shift basis when railcars are being unloaded.

Kindly indicate your agreement to the foregoing by signing all copies of this Memorandum, retaining copies for your records and returning the remainder to the undersigned.

The body of Black Book Document #10 reads:

Re: Bulk Liquid Operations –  
Pacific Coast Terminals

Respecting the above, the Joint Industry Labour Relations Committee hereby confirms the following:

1. The tank farm and liquid bulk ship loading operation will be considered as a single operation (except for maintenance) and persons working within the operation, whether regular work force or daily despatch, will perform any and all functions, or a combination of such functions, as required by the employer, including the operation of the “hook up” crane (to ship or barge), standby during loading of a vessel and any and all production duties including clean-up in the tank farm.
2. It is agreed that this operation will be guaranteed a regular work force, as required by the employer, on a continuing basis. Such regular work force along with a certain number of daily despatch employees (total 25) will be trained by P.C.T. arranged instructors following successful passing of a required medical examination. On successful completion of the training program, including written examination, employees will be given a “P” [P.C.T. (Bulk Liquid)] rating. Except for tradesmen, only employees holding the “P” rating will be eligible for employment on the site. Regular work force employees and daily despatch employees working on the site more than 300 hours in any year will be required to undertake an annual medical examination.
3. a) Skill differential for “P” rating – 75 cents per hour.  
b) Commodity differential for “P” rating – 35 cents per hour.
4. The employer has the right to operate on a continuous three shift basis on any or every day of the year, including through meal periods, in accordance with the provisions of Article 21, Section 21.01(10) of the Collective Agreement. All employees on the job will relieve each other as may be required in order to facilitate such continuous operation.
5. Regular maintenance work and first aid service will be provided as required, by the dry bulk section of P.C.T. First aid service will be provided at all times during which the bulk liquid facility is actually operating.

6. All persons working on the site will be required to wear all personal protective equipment as required and supplied by the employer, including hard hats.
7. Manning – as per the Collective Agreement, i.e. all the men necessary, no unnecessary men.
8. All persons working within the operation must be dedicated to the safety and environmental considerations in accordance with Company requirements.
9. The Company will post rules which are not in conflict with the Collective Agreement or this document and such rules must in all cases be followed by employees.
10. It is agreed that the specified work in connection with the following is excluded from the provisions of Article 26 of the Collective Agreement and may be performed as required by the outside agencies:
  - a) Regular Maintenance Work in connection with the nitrogen vaporizer.
  - b) Regular Maintenance Work in connection with the incinerator.
  - c) Required cleanout of the storage tanks
    - i.e. - styrene tanks – annually
    - glycol tanks – once each 5 year period
11. Following an 18 month period of operation the employer, the Union and the BCMEA will meet to discuss any and all aspects of this operation.

Article 23.01 of the Collective Agreement reads:

#### 23.01 MANNING RULES:

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.

## II

Association witness Mr. Gordon Sims' qualifications included a Bachelor of Arts, a Ship and Marine diploma and a Business School diploma. Mr. Sims was employed at Dow Chemical from 1995 until August of 2003 when he came to PCT. Mr. Sims testified to PCT's new overhead walkways which eliminated the requirement for workers to climb up and down rail cars. Mr. Sims advised that the new walkway system was completed in October 2008 at a cost of 3.8 million dollars. He testified that the new system improved safety, made the job easier and resulted in the job taking less time. Mr. Sims testimony included a video presentation and a conclusion that the new system, in an example of 39 cars, took an average of 17% less time, if all four crew members shared the work equally. Mr. Sims testified that under the old system a 39 rail car four person crew over the course of the shift worked 68 to 69 minutes each and under the new system the same crew worked 56 to 57 minutes each (a 17 % reduction).

Mr. Gordie Westrand, President of Local 500 and Union signatory to BB #10 and BB #10A, described BB #10A as a quota system setting manning based on the number of cars. Mr. Westrand testified that the Employer could assign other duties

but that before they could assign them to the ship there would have to be a proper manning of ship and cars.

Union witness Mr. Larry Stephenson has worked on the waterfront since 1963 and in the bulk rating for about 20 years. He advised that in lowering the walkway ramps (platforms) that he would leave about 5 lengths of chain and it may fit just right on one car and then on the next car it doesn't fit. He said you can't adjust the chains before hand and that generally speaking the majority of the chains require adjustment. Mr. Stephenson testified that the Employer does not want the ramps resting on the cars and that most times the height of the platform needs to be adjusted.

Union witness Mr. Terry Stephenson has worked on the waterfront since February 1977 for approximately 10 years in the trades, 10 years on the Deep Sea Board, 13 years on the Warehouse Board and on Liquid Bulk since about 1996. He testified that he did not know of any other waterfront operation where deep sea and warehouse are combined. Mr. Stephenson advised that after dumping the cars employees go around and attach new wire seals (on the bottom of the car) after pulling out hoses and putting the arm up. He testified that they now attach a wire seal on top of Dow cars, which they did not do before. He testified that on the walkway on a Dow to Dow operation of 39 cars there are typically 4 to 5 cars where the platform requires a side to side adjustment and that you never land all ramps without some requiring adjustments. Mr. Stephenson testified that Dow car shifts finished at 2:30 p.m. and Shell car shifts finished at 12:30 p.m. and that after the installation of the walkway the shifts still finish at the same time. He said the majority of harder work is the 'under the car' hook up and that there is not less work now.

### III

The Association argued that unless management is clearly fettered by Collective Agreement provisions it is free to determine staffing levels and that the overhead walkways constitute a material change, which triggers Article 23.01 “No unnecessary employees”. The Association pointed to the video evidence that there was an overall reduction in time worked of 11% and that the time factor alone justifies the change. The Association argued that the measure of material change requires a ‘before the overhead ramp’ and ‘after the over head ramp’ snap shot. The Association argued that Mr. Sims evidence was not challenged, that the new operation was safer and less onerous. The Association argued that BB #10A was not a “formula” as argued by the Union.

The Union pointed to Arbitrator Munroe’s decision, *Re BC Maritime Employers Association and International Longshore and Warehouse Workers – Canada*, Re-Hearing of Summary Disposition 05-07 [April 25, 2007], as not throwing out BB #10A, but a process for assessing manning before the walkway change to manning requirements after the walkway addition. The Union described the manning provisions of BB #10A as a formula. The Union pointed out that while the Employer is talking about a reduction in the percentage of work on the top of the car, the majority of the work is under the car, work which has increased as outlined by Mr. Stephenson’s testimony. The Union described the 1991 BB #10A agreement as an agreement in which the Employer was given free movement of dock and ship employees and the Union crew got to leave early when the work was done. There was an advantage to both sides. The Union argued that its witnesses are the ones who do the job every day and therefore their testimony should be preferred. The Union argued that the job was no faster now due to the change and

even if it was somewhat faster, it certainly was not enough to reduce BB #10A manning by 25% and 33%. The Union argued that it had proven that there hasn't been a reduction in the manning required.

#### IV

At the outset it is important to understand who had the onus of proof in this case. Authors Brown and Beatty in *Canadian Labour Arbitration*, Fourth Edition, within paragraph 3:2400, describe the burden:

... the general principle is that “the onus of proof in all cases rests primarily on him who asserts a claim to establish and prove it and not on the other side to disprove the claim”.

In the instant case there is a shifting onus. Initially the Union had an onus to prove that PCT can not make the manning change it proposes. Once the Union pointed to the BB #10A manning provisions the onus shifted to the Association to show that there had been a “material change in the circumstances” (operation) compared to the “then existing circumstances” (Arbitrator Munroe, *supra*) to the extent that the adjudicator can consider the proposed change in accordance with item 7 of BB #10 and Article 23 of the Collective Agreement, or as asserted by the Association; PCT can reduce manning when there is a material change in the operation, which triggers BB #10 – 7 and Article 23.01 (d) and (e). Therefore, subsequent to the reference to BB #10A, the question is: Has the Association shown that the overhead walkways installed by PCT constitute a material change in the operation such that it “triggers” arbitral access to consideration of BB #10 - 7 and Article

23.01 (d) and (e)? If the Association has shown a material change of circumstances in the operation in relation to the work, then a measure of the work and the time it takes to do it within the changed operation pursuant to Article 23.01 is appropriate. If it has not, then the adjudication is at an end as the manning remains as agreed to by the Parties as stipulated within BB #10A.

Reviews of the operations are required. Prior to the overhead walkways a crew would typically divide the work between the ‘under the car’ work and the ‘on top of the car’ work. For each car, part of the crew would drag the hose to the bottom of the car and carry out the process involved in connecting the car to the system. That part of the job was not part of the Association’s “material change” argument. The Union however pointed out that there had been changes over the years since 1991, such as a longer and thus heavier hose, especially when full, and new wire seals requiring wire cutters, both of which, it argued, made the job harder and longer as did the addition of attaching new seals to the top of Dow cars after dumping. The Association argued that it was the new walkways that constituted a material change as employees no longer had to go up and down the ladder of each rail car in order to carry out the work on the top of the car. The Association supported its argument with a video of the walkway operation compared to the rail car ladder method. The Association argued that the walkways made the job safer, easier and faster.

On a site visit of ten cars, it took Mr. Rondpré, carrying a pipe wrench and wire cutters, three minutes and seventeen seconds to go up the ladder of each car, unhook the safety chain of each car and descend from each car. Mr. Rondpré scaled the cars at a quick pace. From the walkway it took Mr. Storey two minutes and forty-five seconds to lower the platform at each car and unhook the safety

chain at each car. Mr. Storey did not make any platform adjustments. The cars had been placed on the track in relation to the walkway in the normal manner and normal location the day before. The demonstration was considered an example of what would typically be experienced in a normal production operation.

In the 10 car walkway operation, I observed three car locations where an adjustment would normally be made before an employee would walk out onto the rail car. Three types of adjustments are possible in the normal operation. One adjustment raises the horizontal height of the platform that is positioned over the car. Employees have been advised that the platform should not rest on the car. Another adjustment is a platform positioning adjustment (side to side), which is required sometimes if a car does not line up with the walkway adequately for access to the car, in which case the entire platform can be slid in either direction to align with the car access. In addition, a chain adjustment is part of what locks the platform in place. There are two chains attached to the walkway with the other ends of the chains attached to the platform, one chain attached on each side of the entry way onto the platform. If a horizontal platform adjustment is made, one of the chains may require adjustment to ensure that it is taut. It is not required that both chains be taut.

In the sight visit example, it was my observation that there was not an appreciable difference between the old 'climbing the ladder on the car' method and the new 'overhead walkway' method with respect to time, once the required platform adjustments are taken into consideration. It was also clear that the walkway method was less onerous (less exertion) for the worker and that the walkway method required less attention with respect to safety, as the ladder on the car method, given that the rounded shape of the car presented varying toe hold

distances and thus required an obvious amount of greater concentration to ensure a safe climb and a safe descent of the car while carrying a pipe wrench and a wire cutter.

What constitutes a material change in the operation to the point of triggering an Article 23 assessment? Industry guidance is found in the April 25, 2007 Munroe decision, which was a re-hearing of Summary Disposition 05-07. Industry Arbitrator Munroe was re-hearing the Job Arbitrator's award concerning PCT's decision to reduce the size of crews working the Shiploader operation at the Employer's Port Moody terminal. PCT had changed the operation from a flexible hose operation to a rigid pipe system. In his April 25, 2007 decision, Industry Arbitrator Munroe quoted from his January 2, 2007 award description of the new system as follows:

... technologically and operationally quite different. Briefly, it is a counter-balanced fixed pipe which is relatively-easily swung into place (no crane being necessary) and attached to the vessel by clips. (the new Shiploader is sometimes called a bulk liquid "loading arm").

In his April 25, 2007 decision Arbitrator Munroe quoted from *Re BC Maritime Employers Association and International Longshore and Warehouse Workers – Canada*, Summary Disposition 05-07 [March 19, 2007], Job Arbitrator John Steeves, at page 5 as follows:

Two features are relied on by PCT as being significant. The first is that it is easily movable, 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 that 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 or disconnect; instead, there are four large cam-like grips that are turned into place.

At page 7 of his April 25, 2007 decision, Arbitrator Munroe quoted from what might be termed as his precursor or foundation decision, *Re British Columbia Maritime Employers Association, Pacific Coast Terminals and International Longshore & Warehouse Union – Canada*, [January 2, 2007], as follows:

... Article 23 of the collective agreement was incorporated by reference into BB No. 10; and, by the terms of BB No. 10A, BB No. 10 was expressly reviewed without alteration.

No doubt, BB No. 10A amounts to an agreement between the parties thereto about the proper application of Article 23 to the then-existing circumstances. But especially given para. 7 of BB No. 10, and its carry-forward into BB No. 10A, I am unable to say (as the ILWU-Canada would have me do) that Article 23 was altogether displaced by BB No. 10A regardless of any material changes of circumstance that might later occur.

As I have said, the ILWU-Canada describes BB No. 10A as a “specific” agreement that should be seen, according to the usual principles of interpretation, as “overriding” the more “general” Article 23. However, it is within the “specific” agreement itself that one finds the express carry-forward without alteration of BB No. 10 which includes (by para 7 thereof) an incorporation by reference of Article 23 of the collective agreement. Accordingly, I cannot find that BB No. 10A was intended to “override” the more “general” Article 23 to the full extent suggested by the ILWU-Canada.

To the contrary, I find a common intention that either party to BB No. 10A was entitled to have to resort to Article 23 of the collective agreement in the event of a material change of circumstances.

.....

In the result, the parties are left with the original BB No. 10 and 10A, including the normal operation of Article 23 of the collective agreement in the light of the material change of circumstances which occurred in January 2006. I was informed by the parties that in the event I reached that conclusion, PCT (having consulted with the union in the period November 2005-March 2006) would be proceeding to implement the manning changes that it considers appropriate; and that the union would thereupon decide whether to challenge those changes according to the criteria set forth at Article 23.01(a)-(e).

The matter is referred back to the parties on that basis.

The above quote outlines, in part, the reasoning leading to what can now be considered as a description and an example of a “material change of circumstances”, which allows access to Article 23. It is one template of the threshold or trigger. Beginning at page 10, Industry Arbitrator Munroe quotes from Job Arbitrator John Steeves Summary Disposition 05 – 07 (supra):

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)...

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.

Pages 15 through 19 of the April 25, 2007 decision outline Arbitrator Munroe's reasoning and conclusion as follows beginning with the Association's point 5 argument:

In the further and final alternate, if the Job Arbitrator did have the jurisdiction to make his own determination about the existence or not of "material change of circumstances", and if the Job Arbitrator was entitled to make a separate such determination in respect of the various "aspects" of the new shiploader operation, then

the Job Arbitrator wrongly concluded that there had not been a “material change of circumstances” as regards the pumping-only shifts.

It is unnecessary for me to address the first four of the above-summarized arguments by the BCMEA/PCT, because I agree with the last of those arguments. That is, I agree with the BCMEA/PCT that there was a “material change of circumstances” in relation to the pumping-only shifts as well as in relation to the connect-disconnect shifts.

The evidence before me as regards pumping-only shifts was given by Ken Catton. Mr. Catton first joined PCT in 1984 as the assistant manager of operations at the Port Moody terminal. In 1991, when BB No. 10A was negotiated, he was the assistant terminal manager. He later occupied the position of terminal manager, and from 1997 onward has been PCT’s vice president and general manager.

Mr. Catton testified that BB No. 10A was negotiated in 1991 and implemented in 1994 (see also the January Award at pages 5-6). He said that when BB No. 10A was negotiated and later implemented, a pumping-only shift was a “very rare” occurrence. Certain data were adduced in evidence by Mr. Catton. Based on the data, the estimated number of pumping-only shifts was zero in each of the years 1984 to 1991; and the estimated number of pumping-only shifts ranged from a low of one to a high of eight in the years 1992 to 2000. Commencing in 2001, PCT kept records of the actual number of pumping-only shifts. For the years 2001 to 2006, the actual number of pumping-only shifts ranged from a low of eight to a high of 61.

The zero and very-low annual numbers (estimated) in the years 1984 to 1994 were a function of the metric tonnes of ethylene glycol that were transferred from shoreside-storage to vessels, on average per vessel, coupled with the hourly pumping capacity of the terminal as it was then constituted.

In the period 1984 to 1991, the average tonnage per vessel was roughly 5000. In the period 1992 to 2000, the average tonnage per vessel ranged from approximately 5,400 to approximately 8,000; and

in the period 2001 to 2006, the average tonnage per vessel ranged from approximately 8,500 to approximately 13,400. In the relatively early years, the terminal's pumping capacity was 700-900 metric tonnes per hour. The connection and disconnection duties (and related tasks) took 2-2.5 hours. In the result, it was almost always the case that the loading of the vessel would start (connection) on one shift and be concluded (disconnected) on the next shift. That is to say, it was very rare that the loading of a vessel would stretch into a third shift, with the middle shift being a pumping-only shift. However, as the average tonnage per vessel was going up, and as hourly pumping capacities were changing, the relationship between those two variables produced an upward trend in the frequency of pumping-only shifts.

It is reasonable to assume that in 1991, when BB No. 10A was negotiated, and in 1994 when it was implemented, the parties paid little or no attention to the "circumstance" of pumping-only shifts. After all, for the period 1984 to 1991, there were zero such shifts annually (estimated), and in the period 1992 to 1994, there was only one such shift annually (estimated). At no time during that eleven year period was there ever a *scheduled* pumping-only shift (as there are today).

Mr. Catton was asked why PCT did not attempt to change the pumping-only manning until 2006, given that the number of pumping-only shifts had gone up significantly in the period 2002 onward. Mr. Catton's reply was that PCT's management had initiated consideration of the new loading arm in 2002-2003; that "...we had been anticipating the change of the loading arm for some time" prior to it finally being commissioned; and that the decision was made to await the commissioning of the new loading arm and then to make all shiploader-manning changes at the same time. Mr. Catton said as well that it was not until PCT's management looked closely at the data, which he said was in 2003-2004, that "...we realized that the number of pumping-only shifts had become significant".

Mr. Catton testified in some detail about the required manning on pumping-only shifts under the "old system" [i.e., under the pre-2006 system], as contrasted with the "new system". He said that "...under the old system there was a flexible hose with a hydraulic

crane, and a sling that lifted the hose, and trolleys that supported the hose on the dock so it could move around more easily”. Mr. Catton went on to say that under the pre-2006 system “...the hose might have to be adjusted because of tide changes”; that “...frequently the flexible hose had to be adjusted to ensure that it was positioned properly [and] supported properly to ensure that it didn’t get caught between the ship and dock”. Summarizing the point, Mr. Catton said that “...using the slings and crane and trolleys, the operators would throughout the shift ensure that the hose was in a safe position”.

Mr. Catton then gave the following testimony about the manning requirements for the pumping-only shifts under the “old” and the “new” systems:

Under the old system, one man was required in the operator’s cab to monitor the operation on the computer screen, with control systems and also emergency-stop capabilities. And to adjust the hose, you needed an operator on the hydraulic controls for the crane outside the cab, and at least 1-2 operators on the dock to move the slings and the trolley.

Now, during a pumping-only shift, because we have the fixed, articulated and counter-balanced loading arm, there is no need to make [manual] adjustments during a loading. The only requirement we have is for one operator monitoring the operation in the cab, and the second operator to provide relief and to occasionally open some valves at the tank farm to change tanks [the tanks being the shoreside source of the liquid product being loaded].

As regards the significance of tide changes under the old system, the evidence before the Job Arbitrator, as summarized at para. 8 of SD 05-07, was as follows:

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 dolleys 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.

The evidence before me was that there had in fact been one occasion where the flexible hose had fallen and been caught between the dock and the vessel. However, that is not the main point. The point is that manual adjustments were from time to time required during the pumping-only shifts, just as during the connect-disconnect shifts, to guard against the happening of such event. Mr. Catton testified, without contradiction, that the degree of tide movement requiring the manual adjustments would typically be experienced “at least once every shift”. And as Mr. Catton further testified, while there had been only one occasion on which the flexible hose got caught between the dock and the vessel, and thus while it can be said that the risk of such event was low, it was “a bad risk to face”. Mr. Catton put the matter this way: “We had to man the operation according to the risks faced and to avoid the event occurring”. The manual adjustments relative to tide changes or for other reasons took only about 5-15 minutes per instance. But that did not mean that PCT needn’t have manned up for it.

Arbitrator Munroe concluded by varying SD 05–07 to allow two-person crews on the pumping-only shift. The purpose of the preceding rather detailed review of the Munroe decision is that the April 25<sup>th</sup>, 2007 award is a comprehensive summary of the industry case law on this point to date. It is, in my view, a critical consideration in determining the “trigger” or threshold of what a “material change of circumstances” is, as it pertains to access to an Article 23 review of manning. I am of the view that as it is the manning that PCT wants to reduce, it must be the argued change in the manning requirement that is at the core of an arbitral consideration of the “trigger”. While safety and work burden are Article 23 considerations, the primary argument, and thus the adjudication in this case, centers on the time it takes to do the work.

In SD 05-07 Arbitrator Steeves concluded that:

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.

In his April 25, 2007 decision Industry Arbitrator Munroe concluded:

I agree with the Job Arbitrator's observation at para. 41 of SD 05-07 that "...there has been virtually no change to the monitoring duties [on pumping-only shifts] as a result of the introduction of the rigid pipe". But the monitoring duties are only one feature of the before-and-after snapshots, so to speak. Under the old system, the four-person crews on the pumping-only shifts were engaged not only in the required monitoring, but also in the necessary dockside manual adjustments as described in the evidence. With the new system, that second set of duties has completely dissipated. That fact on its own, but especially when coupled with the significant increase in the number of pumping-only shifts since the negotiation and implementation of BB No. 10A, meets the test of a "material change of circumstances" as established by the January award.

In both decisions, to allow the PCT reduced crews, the adjudicators relied on clear evidence of a reduced work load. Based on my review of the above case law, the primary "trigger" is a "material change of the circumstances" in which there is a clear and measurable reduction in work.

In the instant case, I am not satisfied that the installation of the walkway, on its own, can be considered a material change of the circumstances from the standpoint of the work. The work operation in the main has not changed. Access to the top of the car has changed. That change is beneficial in terms of safety and, in my opinion, has made access to the top of the car easier. It has not however made a change to the operation in terms of the work functions, i.e. ‘bottom of the car’ connection, ‘top of the car’ duties, and it has not changed, in a clearly measurable way, the time it takes to do the work.

The Association argued that the video presented by Mr. Sims showed a time savings; however the preferred evidence, from the standpoint of measuring the time it takes to do the actual work, was the site visit and the testimony of Mr. Larry Stephenson and Mr. Terry Stephenson. It is not that there was a credibility issue; rather that the video did not take into account the required platform adjustments. Such platform adjustments are a critical component of the time it takes for walkway rail car access and therefore the time it takes to do the work. The clear testimony of Mr. Larry Stephenson and Mr. Terry Stephenson was that there was no change in terms of the time it takes to do the work or in the time the operators leave when the work is complete. The reality is employees must stay on site until the cars are empty so they can complete their work of closing up, including raising the platforms.

On a careful review of the submissions of the Parties, the Association has not discharged their requirement to show a material change in the operation which clearly impacts the time it takes to do the work.

In the result, the manning described in BB #10A for rail car unloading remains the required manning.

I thank counsel for their helpful submissions.

Dated in Vancouver, British Columbia this 27<sup>th</sup> Day of May 2009.

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Ronald S. Keras  
Job Arbitrator

File: 522