

IN THE MATTER OF SUMMARY DISPOSITION 03-08

BETWEEN:

British Columbia Maritime Employers' Association

(the "Association")

AND:

International Longshore and Warehouse and Warehouse Union-Canada

(the "Union")

***Re: Pacific Coast Terminals
Railcar Unloading Grievance
(Article 1.03)***

JOB ARBITRATOR:

John Steeves

COUNSEL:

Brian Whitfield, for
the Association

Robert Ashton, Gord
Westrand, Dave
McVight, Brian
O'Connell, for the
Union

OTHER APPEARANCES:

Wade Leslie, Clayton
Smith, for Pacific
Coast Terminals

DATE OF HEARING:

June 3, 2008

PLACE OF HEARING:

Port Moody, B.C.

DATE OF AWARD:

June 4, 2008

A. INTRODUCTION

1. This is a decision about whether the use of an over-ride function at the railcar unloading operation is part of the scope of the Union's work under the collective agreement.

2. At a hearing on June 3, 2008 I heard the evidence and submissions of the parties. I then issued an oral Summary Disposition that there the use of the over-ride function at the railcar operation of Pacific Coast Terminals was within the scope of work of the Union, pursuant to Article 1.03. Further, I directed that my decision be stayed for 24 hours. This written decision is confirmation of the Summary Disposition, with further reasons, pursuant to Article 6.04(a)(i) of the collective agreement.

3. I am a job arbitrator appointed pursuant to Article 6 of the collective agreement. Article 6.04(a)(i), among other things, states that the job arbitrator "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 the arbitrator "to be qualified to give such information".

B. BACKGROUND

4. Pacific Coast Terminals (PCT) operates a bulk-loading terminal in Port Moody B.C. Employees of PCT under this collective agreement are members of the Union, Local 500.

5. The operations of PCT include the unloading of railcars containing sulphur. The person who unloads the rail cars is the Bulk Operator, a member of the Union, and he operates a console that controls the unloading. There is more than one kind of sulphur handled by PCT and the different kinds are transported and stored separately.

6. Each railcar passes a reader that scans the bar code on each car before it is unloaded. If the information from the scan is consistent with the information programmed into the computer a yellow prompt appears in the screen used by the Bulk Operator. This means he can proceed with the unloading process. If there is a problem with the scanned information or other problems (such as a “box knuckle” involving a problem with the coupling between the cars) a red signal appears on the screen. The Bulk Operator cannot proceed with the unloading process if there is a red prompt on the screen.

7. In order to proceed to unload with a red prompt a foreman has to come and over-ride the red prompt. Foremen belong to a different bargaining unit than members of the Union. According to the Association this kind of oversight by the foremen is necessary to prevent serious problems such as contamination of one product by another. As well, a box knuckle has to be properly investigated to make sure a more serious problem does not happen. Normally it is “rare” for a foreman to override a red code (according to the evidence of the Association) and no one could remember the last time this had happened before the events giving rise to this grievance.

8. Vancouver Wharves is another bulk terminal in the Vancouver area and it started a maintenance shutdown on or about June 2, 2008. This will take place over about two weeks and during this time sulphur railcars are to be sent to PCT for unloading. The evidence is that all of the sulphur that was destined for Vancouver Wharves is of the wet prill type. PCT handles very little of this kind of sulphur.

9. Two trains have been unloaded at PCT since railcars began to be diverted from Vancouver Wharves. The train that gave rise to this grievance was unloaded on June 3, 2008, starting at 4:40 PM. It had 35 cars with wet prill sulphur originally destined for Vancouver Wharves and 19 cars for PCT, for a total of 54 cars. The previous night there had been another train with about 80

cars, of which about half contained wet prill sulphur originally destined for Vancouver Wharves.

10. The problem giving rise to this grievance is that PCT's computer program cannot read the bar codes for the Vancouver Wharves cars that contain wet prill sulphur. When the cars pass the reader a red prompt shows up at the console of the Bulk Operator, the unloading operation has to stop and a foreman has to over-ride the red prompt each time. For example, for the train on June 3, 2006, a foreman had to override the red prompt 35 times and the Bulk Operator was able to complete the unloading of the other 19 cars in the train by himself because a yellow prompt appeared for them. PCT has begun to look at the technical aspects of the coding problem.

11. The Union now says the over-riding of the red prompt is part of the scope of their work under the collective agreement.

C. DECISION AND REASONS

12. The Union's jurisdiction over work is described in Article 1.03,

This Agreement shall apply to all such persons employed and dispatched pursuant to the terms of this Agreement for the performance of work in connection with the movement of inbound or outbound cargo from the time it enters or leaves the dock, or with the movement of cargo from the stow to release from conventional or other ship's gear or vice versa, and so long as it remains at a dock and under the control of a member of the Association covered by this Agreement. Work in connection with the movement of such outbound and inbound cargo shall include the operation of stationary and mobile cargo handling devices and equipment; to or from railroad cars, trucks trailers, and other vehicles, barges or scows when any or all of the foregoing are alongside within reach of conventional or other ship's gear and comes under the control of a member of the Association up to the point at which it is stowed in or discharged from a deepsea or coastwise vessel.

13. A detailed analysis of Article 1.03 is not necessary. I take it as self-evident that the Association and the Union have agreed on a definition of the scope of work that is broad and detailed. Further, Article 1.06 confirms that the agreement between the Association and the Union – including, the scope of work described in Article 1.03 - does not apply to foremen.

14. By way of summary, the facts are that the rare occurrence of an over-ride of the red prompt has been replaced by a situation where it happens 30 – 40 times per shift. A foreman, a person outside the bargaining unit of the Union, now monitors the appropriate screen and does the over-ride. The Union acknowledges that foremen have done the rare occurrences of over-ride in the past. But there is no suggestion that the Union has ever agreed to this and I find any history of over-rides by foremen is of no consequence for this grievance.

15. I appreciate that the operation of the override function includes the exercise of considerable responsibility and errors can have serious consequences. However, it has not been demonstrated that there are no members of the Union who can exercise this level of responsibility. Further, I am unable to read Article 1.03 as making any restrictions to the scope of work based on levels of responsibility and I was not directed to any other provision in this regard.

16. I find that the use of the override of the red prompt has become necessary for the performance of work in connection with the movement of cargo from rail cars, as described in Article 1.03. Put another way, the use of the override has become part of the movement of cargo. I refer to the parties the issue of what classification is appropriate to perform this work.

17. With regards to remedy I note that the situation is an extraordinary one of short duration and there is no suggestion that PCT was aware of the problem before June 2, 2008, when the first trains with wet prill arrived. Further, there is the prospect of a technical solution to the problem. In these circumstances I direct that my finding be stayed for 24 hours or 9:00 PM, June 4, 2008.

18. The grievance is allowed, in part.

It is so awarded.

Dated this 4th day of June, 2008, in the City of Burnaby, B.C.

“JOHN STEEVES”

John Steeves