

IN THE MATTER OF SUMMARY DISPOSITION 2009-08

BETWEEN

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

AND

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

**Kinder Morgan Vancouver Wharves - Berth Five Treatment
Plant Failure - Article 26.01.9**

Job Arbitrator:	Ronald S. Keras
Counsel for the Association:	Mr. Trevor Clifford
Counsel for the Union:	Mr. Rob Ashton
Witness:	
Local 500:	Mr. Roy Breznik
Summoned witness:	Mr. Pat Sugiyama
Summoned witness:	Mr. Doug Godard
Vancouver Wharves:	Mr. Al Winter
In Attendance:	
Vancouver Wharves:	Mr. Alex Gould
Hearing:	September 10, 2009
Location:	Vancouver, BC
Decision Published:	September 15, 2009

I

The Union's issue was its assertion that the work of replacing piping at the Kinder Morgan Vancouver Wharves treatment plant at Berth Five is Regular Maintenance Work. The Union sought an order that Vancouver Wharves use Local 500 members to do the work.

The Association's assertion was that the disputed work was not Regular Maintenance Work as there had never been a failure of this type or magnitude before and the work was therefore an exception to Regular Maintenance Work as described in the Collective Agreement.

The first paragraph of Article 26.01.9 reads:

Regular Maintenance Work (as described hereunder): Persons employed and dispatched under this Agreement will perform Regular Maintenance Work, provided jointly rated employees are immediately available on the site or through the dispatch system, and capable of performing such work. If employees are not available in the required rating(s), such work may be performed outside of this Agreement without prejudice to this position. Work required on new construction, new installation, significant alteration of existing structures or installation, or work under warranty, is not included in the term "Regular Maintenance Work". Such work may be performed outside this Agreement. Warranty work shall include removal and reinstallation as required to validate the warranty.

The hearing included a view of the treatment plant system, in particular, a view of the failed line.

II

Union witness and Plumber Mr. Roy Breznik, a regular work force employee at Vancouver Wharves for about the last five years, testified that his maintenance work at Vancouver Wharves typically involves all kinds of jobs, whenever something is leaking or broken, steel and plastic pipe, he repairs or replaces parts to correct the problem. He estimated that it would take him and a helper about one week to accomplish the disputed work.

Summoned Union witness and regular work force Foreman Mr. Pat Sugiyama testified that the disputed work was the typical type of work accomplished by Mr. Breznik.

Summoned Union witness and regular work force Foreman Mr. Doug Godard said the disputed work was Regular Maintenance Work, that it was not a significant job and that he estimated that it could be done in three days.

Association witness and Maintenance Manager Mr. Al Winter testified that he received an email from the Employer's Director of Environment and Engineering requesting that maintenance immediately fix the treatment plant due to environmental concerns. Mr. Winter described the damage to the system as a "catastrophic event". Mr. Winter was concerned about containment, about water getting out of the system, in which case Vancouver Wharves would be "shut down". He estimated that it would take a plumber and helper two to three weeks to repair the system. He testified that Vancouver Wharves can add plumbers from the hall when needed. Mr. Winter said he could not recall any similar large jobs being done by the regular work force plumber.

III

The Union argued that the disputed work was Collective Agreement work as it was the type of work often done by Mr. Breznik during his five years as a regular work force employee at Vancouver Wharves. The Union argued that Mr. Breznik's job was to repair and replace pipes as part of the repair and upkeep of the system.

The Association argued that the system failure was so significant that the system could not operate and that the repair in its entirety is not "regular", "normal" or "usual". In reference to the industry case law, the Association argued that nothing has been done by the regular work force plumber of this scale before. The Association assertion was that this work, in its entirety, is not Regular Maintenance Work.

IV

I do not want to diminish the environmental concern as expressed by the email Mr. Winter received from the Vancouver Wharves Director of Environment and Engineering. From Mr. Winter's testimony I am satisfied that quick action to repair the system is required.

Is the repair Regular Maintenance Work pursuant to the meaning of Article 26.01.9?

Reference was made to *BC Maritime Employers Association and International Longshore and Warehouse Union, Canada*, July 7, 2000, R.S. Keras, Summary

Disposition 05 – 2000. At page two of the decision an agreement of facts included the following:

The parties agreed that ILWU members have not changed the rails at the Neptune Terminals dumper and that the contractor did the only changing of dumper rails at Neptune in the last 20 years.

The facts in the instant case differ. In the instant case the disputed work included the type of work often done by Mr. Breznik. In the instant case there was a treatment plant system failure; one piping line of the system failed. The repair work was to replace failed piping. It is not a replacement of the entire system. It is not “new construction, new installation, significant alteration of existing structures or installation, or work under warranty”.

In *BC Maritime Employers Association and International Longshoremen’s and Warehousemen’s Union, Canadian Area*, December 16, 1985, G.E. McKee, Industry Arbitrator McKee referenced his decision of October 13, 1980 at page 3 as follows:

As stated in a previous decision --- my research elicited the fact that the word ‘regular’ means ‘periodic’, ‘recurrent’, ‘routine’, ‘usual’, ‘normal’ and ‘ordinary’, and that the word ‘maintenance’ means ‘repair’ and ‘upkeep’.

Replacing the failed pipes and elbows and associated work in the failed piping line of the Berth Five treatment plant system is the type of work that is the “regular” work of Plumber Roy Breznik. It is work that fits the Arbitrator McKee regular definition (“periodic, recurrent, routine, usual, normal and ordinary”). Replacing pipes and elbows is “maintenance” as it is part of the “repair” and “upkeep” of the

treatment plant system. Therefore the work is Regular Maintenance Work as described in Article 26.01.9.

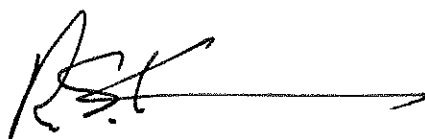
Local 500 members are to be assigned the work.

The outcome would likely have been different if the entire treatment plant system was being replaced.

In the result, on a careful review of the submissions of the Parties, the Union's position succeeds. The disputed work is work which falls within the Collective Agreement.

I thank counsel for their helpful submissions.

Dated in Vancouver, British Columbia this 15th Day of September 2009.

A handwritten signature in black ink, appearing to read 'R.S. Keras', is written above a horizontal line.

Ronald S. Keras
Job Arbitrator

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