

IN THE MATTER OF A CONTROVERSY

Between

PACIFIC MARITIME ASSOCIATION

and

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION LOCAL 13

Regarding Alleged Charges Against
Mr. Daniel Imbagliazzo, #33771,
Receiving Moneys from
Marine Terminals Corporation
While on Union Business

SC-10-97

OPINION AND DECISION

of

John Pandora
Area Arbitrator

Long Beach, California

February 21, 1997

CLRC
BMCW
RA
RO
GR
JS

The hearing was held at 9:20 A.M. on Friday, February 21, 1997, at the Pacific Maritime Association, 100 West Broadway, Suite 3000, Long Beach, California. Each party was afforded full opportunity for examination and presentation of relevant arguments, documents, and witnesses. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

APPEARANCES

FOR THE EMPLOYERS: Mr. Charles M. Young, PMA

FOR THE UNION: Mr. Joe Cortez, Local 13
Mr. Ralph Espino, Local 13
Mr. Tom Hebert, #35348

ALSO PRESENT: Mr. Tim Kennedy, PMA
Mr. Paul Russell, PMA

Mr. Mike Fogarty, Int'l. Trans. Service
Mr. Craig Milburn, Marine Terminals Corp.
Mr. Bobby Munoz, Maersk Stevedoring Co.
Mr. Eric Porter, Int'l. Trans. Service
Mr. Bob Roach, Metropolitan Stevedore Co.

Local 13 Members

Mr. R. Bozan	Mr. A. Ortega
Mr. S. Bozan	Mr. R. Ortiz, Jr.
Mr. N. Geich	Mr. G. Padovan
Mr. T. Hebert	Mr. N. Padovan
Mr. W. Huli	Mr. M. Petschlag
Mr. D. Lujan	Mr. J. Potter
Mr. D. Miranda	Mr. P. Quinones
Mr. R. Negrete	Mr. J. Radisich
Mr. R. Ogden	Mr. J. Sestich

ISSUE

Did Mr. Daniel Imbagliazzo, #33771, and Marine Terminals Corporation conspire to violate the PCL&CA by illegal payroll payments to Mr. Daniel Imbagliazzo while he was on Union business?

DISCUSSION

The contention of the Employers (PMA and Marine Terminals Corporation) is that the payments to Mr. Imbagliazzo was proper during the time period of February 25, 1996 through March 11, 1996 and, also, during the time period of September 19, 1996 through October 1, 1996.

The Union's contention is that Mr. Imbagliazzo did receive payroll payments postdated from April 12, 1996 to the time period of February 25, 1996 through March 11, 1996. He also received payroll payments postdated from December 14, 1996 to the time period of September 19, 1996 through October 1, 1996, and this is illegal under the PCL&CA.

OPINION

Upon reviewing the transcript, exhibits, and testimony of witnesses, the following conclusion, hereby confirmed, is rendered:

This Award is separate from Arbitration Award No. SC-9-97 although all facts and evidence are derived from the transcript, exhibits, and testimony of witnesses from the hearing.

Arbitration Award No. SC-9-97 dealt with "phantom" payroll entries. This Award deals with postdated guarantee payments to Mr. Imbagliazzo for the periods when he was unavailable for job assignments while on Union business.

Employer Exhibit No. 1 shows Mr. Imbagliazzo was a steady crane operator for Marine Terminals Corporation and was unavailable for work from February 25, 1996 through March 11, 1996, due to Union business. Marine Terminals Corporation admits to postdating a payroll check on April 12, 1996 for that time period.

Union Exhibit No. 4 shows Mr. Imbagliazzo receiving 75.50 guarantee hours and Employer Exhibit No. 1 shows 63.0 guarantee hours. It is an undisputed fact that Mr. Imbagliazzo received guarantee pay while unavailable for work due to Union business.

February 21, 1997

Union Exhibit No. 6 (PMA payroll) shows the same individual not available for work during payroll week #40-96 ending on September 28, 1996. Employer Exhibit No. 1 shows the same individual not available for work from September 19, 1996 through October 1, 1996 (Marine Terminals Corporation's hours' document).

Union Exhibit No. 6 shows payroll week #51-96 for week ending December 14, 1996, Mr. Imbagliazzo receiving 42.5 guarantee hours for payroll week #40-96 for week ending September 28, 1996.

Employer Exhibit No. 1 also shows 42.5 postdated guarantee hours during the same period.

All guarantee hours were paid at the 1.8 third-shift rate. Mr. Imbagliazzo worked as a first shift steady crane operator for Marine Terminals Corporation.

The facts, based on the evidence presented, is clear. Mr. Imbagliazzo and Marine Terminals Corporation conspired to deceive Pacific Maritime Association regarding payroll payments during the two time periods.

The Pacific Maritime Association is not without fault. The Pacific Maritime Association's monitoring of payroll practices of Marine Terminals Corporation is not adequate. In fact, due to the Pacific Maritime Association's negligence of payroll practices, this fosters "side deals" and "phantom" payrolls as Arbitration Award No. Sc-9-97 points out.

The violations of Mr. Imbagliazzo and Marine Terminals Corporation are Sections 18, 24, 2, and 4, and Section VI of the Memorandum of Understanding under the current Agreement.

The postdated payment for the second period of nonavailability was issued after the implementation of the Memorandum of Understanding on October 26, 1996. The time period is before October 26, 1996 but prior to retroactivity payments on June 29, 1996.

The testimony of Mr. Jeff Burgin, Marine Terminals Corporation, was less than credible. His testimony gives the appearance of Marine Terminals Corporation subsidizing Mr. Imbagliazzo's Union activities.

The creative payroll practices of Marine Terminals Corporation in collaboration with Mr. Imbagliazzo has a corrupting influence among other longshoremen and Direct Employers of Pacific Maritime Association.

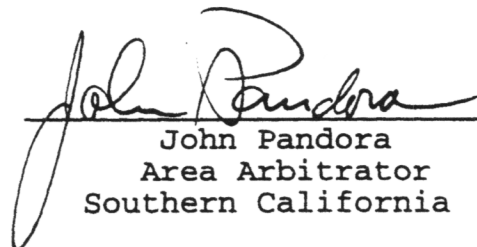
Therefore, the following decision, hereby confirmed, is rendered:

DECISION

1. Mr. Dan Imbagliazzo, #33771, shall be terminated forthwith as a steady employee from Marine Terminals Corporation.

2. Mr. Dan Imbagliazzo's termination from steady employed with Marine Terminals Corporation shall apply for the duration of his registration under the PCL&CA.

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John Pandora
Area Arbitrator
Southern California

JP:nr
Dated: March 25, 1997