

BEFORE THE IMPARTIAL ARBITRATOR

DAVID L. MILLER

In the Matter of Arbitration)
Between:)
)
PACIFIC MARITIME ASSOCIATION)
)
and)
)
INTERNATIONAL LONGSHORE)
AND WAREHOUSE UNION,)
LOCAL 13)
)
(re: Nonimplementation of Award)
Numbers SCGM-0009-2012 and)
CA-10-2012))
)

TRANSCRIPT OF PROCEEDINGS

Long Beach, California

Tuesday, December 18, 2012

Reported by:

MARCENA M. MUNGUIA,
CSR No. 10420

Job No.:
B9040PMA(B)

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TRANSCRIPT OF PROCEEDINGS, taken at
300 Oceangate, Twelfth Floor, Long Beach,
California, commencing at 11:00 a.m.
on Tuesday, December 18, 2012, heard before
DAVID L. MILLER, an Impartial Arbitrator,
reported by MARCENA M. MUNGUIA, CSR No. 10420,
a Certified Shorthand Reporter in and for
the State of California.

APPEARANCES:

For the EMPLOYERS: PACIFIC MARITIME ASSOCIATION
By: STEVE FRESENIUS
300 Oceangate
Twelfth Floor
Long Beach, California
90802-4443

For the UNION: INTERNATIONAL LONGSHORE
AND WAREHOUSE UNION,
LOCAL 13
By: HARRY DONG
630 Centre Street
San Pedro, California
90731

Also Present: C. Lindsay, PMA
R. Merical, PMA
P. Tabyanan, PMA
E. Naefke, PMA

I N D E X

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E X H I B I T S

JOINT:	Marked for Identification	Received in evidence
1 - Opinion and Decision Number SCGM-0009-2012, dated 10/9/12	8	8
2 - Opinion and Decision Number CA-10-2012, dated 11/30/12	8	8
UNION'S:		
1 - 11/21/12 letter from Marzano to Sundet and Ortiz	8	8
2 - 11/27/12 letter from Marzano to Sundet and Ortiz	9	9

1 Long Beach, California, Tuesday, December 18, 2012

2 11:00 a.m.

3
4
5 MR. MILLER: All right. We're going on the record.

6 The Union has called the Arbitrator regarding a
7 failed to implement by the Employers regarding the
8 Pacific Coast Special Grievance Handbook.

9 So let's make sure we understand something here.
10 Under the Special Grievance Handbook, we've got a list of
11 the way the appeal procedure works. It ends with
12 Mr. Rubio. Does either side want to disagree with me
13 that those are the words out of that book? Either side
14 want to tell me right now that isn't what the book says?

15 MR. PRESENIUS: That's what the book says, but
16 we would --

17 MR. MILLER: I didn't ask you that. I want anybody
18 to tell me the book says there's another step past
19 Mr. Rubio other than page 12, item 13. I'll read it for
20 you into the record:

21 "The JPLRC shall promptly implement the
22 remedies provided in the final decision. No
23 other appeals or proceedings, including
24 appeals to the JCLRC or the Coast
25 Arbitrator, shall be allowed in cases

1 involving Section 13.2 claims in order to
2 ensure their final resolution with all due
3 speed," "claims in order to ensure their
4 final resolution with all due speed."

5 Does everybody understand that? Now, I want you
6 guys to think. That's what an Arbitrator is told to do
7 and make sure the parties abide by it. Let's make sure
8 we understand that.

9 Now, if somebody -- this came from the Coast
10 Committee when they developed this back then and they
11 took themselves out of it. As you can see, they took
12 themselves out of the appeal procedure. I did not write
13 it. I did not write it, which means until somebody wants
14 to give me something different, there is no appeal to the
15 Coast. The JCLRC has none, no voice in this whatsoever.
16 Therefore, the local parties, Mr. Rubio has given his
17 decision, which is Case Number 10 of 2012, which is an
18 appeal of SCGM-0009-2012.

19 They both -- they originated with the decision
20 made by myself, and Mr. Rubio affirmed it and modified it
21 in a form that does not deter from what you're obligated
22 to do.

23 Is that a true story of what's happened?

24 MR. DONG: Yes, sir.

25 MR. MILLER: Nobody objects to it? That's exactly

1 what's happened.

2 MR. FRESENIUS: Well, can I --

3 MR. MILLER: No. Wait a second. It's real specific.

4 Mr. Aldape is prohibited from work for 180 days,
5 affirmed by Mr. Rudy Rubio.

6 Now, do you have any objection to abiding by the
7 Award, Mr. Dong?

8 MR. DONG: No, sir.

9 MR. MILLER: All right. Mr. Fresenius, are you --
10 you seem to be the one that has some reason why you don't
11 want to abide by both Awards. Do you have a -- and the
12 wording I've already quoted in Section 13, which then
13 takes us to the black book, which I have to apply some of
14 the black book to the green book because that's the only
15 way to get it, because obviously you're not going to
16 implement the Award or you're going to tell me you have
17 implemented it. Have you implemented it?

18 MR. FRESENIUS: We have not.

19 MR. MILLER: Are you refusing to implement it?

20 MR. FRESENIUS: We are.

21 MR. MILLER: Okay. Then that's that. Then we'll
22 move it to the next step, which will be --

23 MR. FRESENIUS: Can I make a comment though?

24 MR. MILLER: You can make a statement. You already
25 said you're not going to implement it. That's good

1 enough for me. Do you have a reason why you don't want
2 to implement it?

3 MR. FRESENIUS: I just wanted to address the issue
4 about what it says in the green book, and we certainly
5 don't disagree, as you read it straight from there. The
6 only thing that we're claiming is when we say the CLRC
7 has no jurisdiction, they are the administer. They
8 administrate the Collective Bargaining Agreements and we
9 have made a request up to the CLRC to discuss this issue
10 and we're waiting for that response from the
11 International.

12 MR. MILLER: Give me the letter that I received also.

13 MR. DONG: There were two letters sent. This is the
14 first one sent dated November 21st.

15 MR. MILLER: Here's a letter sent. We'll make this
16 Union Exhibit 1. Joint Exhibit 1 will be the Miller
17 Award, Joint Exhibit 2 will be the Rubio Award, and Union
18 Exhibit 1 will be a letter from Marzano to the Coast
19 Committee.

20 Okay. And I'm going to assume -- any response?

21 (Joint Exhibits 1 and 2 were marked for
22 for identification by the Arbitrator and
23 received in evidence.)

24 (Union's Exhibit 1 was marked for
25 identification by the Arbitrator and received

1 in evidence.)

2 MR. FRESENIUS: No response.

3 MR. MILLER: Okay. Which they're not obligated to, I

4 guess, under the green book.

5 Okay. Any orders to this Arbitrator to do

6 anything different from the Coast Committee? Anything

7 from either side? Does either of you have anything

8 telling this Arbitrator to do anything other than make

9 sure my Award and Mr. Rubio's are implemented?

10 Nothing. Okay.

11 MR. DONG: Nothing.

12 MR. MILLER: Okay. And then we have a letter from

13 Mr. Marzano telling the Joint -- that's a Joint Dispatch

14 Hall, which means both of you run that Joint Dispatch

15 Hall; correct? You've taken it upon yourself as

16 Employers to tell the dispatchers at Local 13 to dispatch

17 this man, contrary to both Awards. Correct?

18 (Union's Exhibit 2 was marked for

19 identification by the Arbitrator and received

20 in evidence.)

21 MR. FRESENIUS: Well, we have --

22 MR. MILLER: Yes or no?

23 MR. FRESENIUS: We haven't told them anything.

24 MR. MILLER: You didn't, h'm?

25 What did they tell your dispatchers? Who's this

1 letter -- you didn't -- oh, so then it's okay for the
2 dispatchers to put him on nondispatch. You've got a
3 letter here that says don't put him on.

4 MR. FRESENIUS: Yeah, but you asked had we told the
5 dispatchers to do anything.

6 MR. MILLER: Did you give a dispatcher, like you
7 always do, a letter saying this man is on nondispatch?

8 MR. FRESENIUS: We did not.

9 MR. MILLER: Did you do that originally?

10 MR. FRESENIUS: We did not.

11 MR. MILLER: Aren't you obligated to do that,
12 according to the Awards, yes or no?

13 MR. FRESENIUS: Well, I mean, that's the normal
14 practice, but sometimes an Arbitration Award is enough
15 that we don't put someone on nondispatch. You direct
16 them --

17 MR. MILLER: Do you have a problem if Local 13 today
18 puts him on nondispatch?

19 MR. FRESENIUS: We have a problem with it. We're not
20 saying --

21 MR. MILLER: You don't want it done.

22 MR. FRESENIUS: We don't want it done.

23 MR. MILLER: It's a Joint Dispatch Hall. It takes
24 both sides to agree to it. Are you disagreeing with it
25 if they took it? Would you consider that unilateral

1 action on their part?

2 MR. FRESENIUS: Well, there's actually a
3 precedent-setting arbitration that you did where we put
4 someone on nondispatch and they refused to do it and you
5 ruled that they had to do it.

6 MR. MILLER: Thank you. Thank you.

7 All right. I'm going to move this -- if you do
8 not abide by the arbitrations by 5:00 today under the
9 black book, Mr. Dong, you're free to move this to the
10 next step, whatever that step may be. In this case, I'm
11 going to assume it's somewhere at the Coast level,
12 Mr. Rubio. I don't know where you go after this, but I'm
13 going to consider it stalled if you do not receive a
14 joint letter and the PMA will not partake jointly with
15 you, as the Awards say.

16 Both sides understand that? Okay.

17 MR. FRESENIUS: Is your order enough for the Union to
18 place him on nondispatch?

19 MR. MILLER: I'm giving you a verbal order. It's a
20 Joint Dispatch Hall.

21 MR. FRESENIUS: Understood.

22 MR. MILLER: You either agree with them or don't
23 agree with them. They're not going to do it unilaterally
24 like the Employers have done and send out a unilateral
25 letter unless that's what they want to do. If they want

1 to do that, then they'll be guilty of unilateral action.
2 You're guilty of unilateral action. You've taken it
3 unilaterally upon yourself to disobey an order which is
4 in the form of an arbitration decision; in fact, two
5 decisions. One's basically the Coast Arbitrator and if
6 you want to defy him, be my guest. It doesn't bother me.

7 Now let's go to the section where we're going to
8 go before it's stalled. 17 --

9 MR. FRESENIUS: 151.

10 MR. MILLER: 17.151. Because of the Employer's
11 nonaction, and if it continues until 5:00 o'clock,
12 Mr. Dong, you are free to proceed under 17.15, 17.151,
13 but there's another one after that.

14 Where's the one about moving it, that the
15 grievance procedure is stalled?

16 MR. FRESENIUS: That's in 151 in the last paragraph:

17 "If such complaint is not resolved
18 within seven days," that's what we're doing
19 here, "the matter shall be referred to the
20 Area Arbitrator whose decision shall be
21 final and binding. The grievance procedure
22 shall then be deemed exhausted."

23 Is that what you're referring to?

24 MR. MILLER: The one we just used on the picket line
25 language the other day. There's another one. 17.282.

1 17.151 and 17.282 is at your disposal if the
2 Employer continues.

3 "If the Local grievance machinery
4 becomes stalled or fails to work, the matter
5 in dispute can be referred at once by either
6 Union or the Association to the Joint Coast
7 Labor Relations Committee for disposition."
8 That's the way we've always done it. When you
9 don't implement Awards, it's stalled. It's on the
10 record. Okay? You understand that? 5:00, I want to
11 hear from one party or the other.

12 Okay, Mr. Dong? You keep in correspondence.
13 You leave your fax lines open for Mr. Fresenius to comply
14 with you with the normal jointly agreed to nondispatch
15 letter that goes to your dispatchers in accordance with
16 both Awards, Miller's and Rubio's. You understand that?

17 Both sides understand that?

18 MR. DONG: Yes, sir.

19 MR. MILLER: If it doesn't happen at 5:00 -- again,
20 all this will go into writing tomorrow. If it fails to
21 happen by 5:00, I will then give you a decision that 17
22 point -- you can go ahead and go verbally under those two
23 sections I gave you and take this to whatever step you
24 want next. All right?

25 MR. DONG: Okay.

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MR. MILLER: This issue is closed. Thank you.

(Proceedings concluded at 11:10 a.m.)