

CONFIDENTIAL

In the Matter of a Controversy

Between

Grievant

And

Accused

Re: Special Section 13.2 Grievance Complaint
(B) Retaliation/Prohibited Conduct.
SPNC-0016-2018

NCGM-0004-2018

Opinion and Decision
of Thomas A. Clark
Northern California Area Arbitrator

Under the Authority of the Pacific Coast
Longshore and Clerks' Agreements (PCL&CA)
2014-2019

October 30, 2018

Oakland, California

The original hearing scheduled for October 8, 2018 was postpone by the Union and rescheduled. The second hearing was held at 9:57 a.m. on Monday, October 15, 2018, at the office of the Pacific Maritime Association, 475 14th Street, Oakland, California. However, the accused [REDACTED] failed to show and was asses a penalty of (15) days off by the Area Arbitrator.

The Area Arbitrator rescheduled the hearing for October 30, 2018 at 10:00 a.m. at the PMA office in Oakland. The hearing reconvened as scheduled.

Each party was afforded full opportunity for the examination and presentation of relevant arguments, documents and testimonies of witnesses. A Certified court reporter was present at this hearing to provide a transcript of the proceeding.

APPEARANCES:

GRIEVANT:

ACCUSED:

ON BEHALF OF THE UNION:

ON BEHALF OF THE EMPLOYER:

ALSO PRESENT:

[REDACTED]
[REDACTED]
Mr. Ed Henderson, Business Agent
ILWU Local 10

Jaime Villanueva, Labor Relations
Gregg Hallett, Labor Relations
Pacific Maritime Association

Aaron Wright, Local 10
Vincent Washington, Local 10
Steven Rundle, Local 10
Ken Dow, Local 10

JOINT EXHIBITS:

1. ILWU-PMA Pacific Coast Special Grievance HandBook, 2014-2019.
2. Complaint Number SPNC-0016-2018.
3. Notice of Hearing – Rescheduled and Order to Appear letter.
4. Web Electronic Personal Folder for [REDACTED] and [REDACTED]

BACKGROUND:

On 9/11/18, [REDACTED] attended an Executive Board meeting located on the property of Local 10. At this meeting it is alleged that she began talking about a prior 13.2 case which involved her and witness [REDACTED]. She was informed that she was in violation of a confidentiality procedure under Section 13.2. The accused was asked to discontinue her conversation involving her prior Section 13.2 case 3 or 4 times she refused and stated she did not care. She was informed by [REDACTED] that he would cite her under Retaliation and Prohibit Conduct under the 13.2 HandBook. She repeated "I don't care."

[REDACTED] was a prior witness in a 13.2 complaint which involved the accused [REDACTED]

The grievant [REDACTED] filed a Section 13.2 Harassment, Discrimination & Retaliation Claim and drew a circle under the letter (B) Retaliation against the accused [REDACTED] SPNC-0016-2018.

On October 30, 2018, the arbitrator was placed in an unusual position [REDACTED] was instructed in her final notice to appear to attend the hearing with her representative, she showed up without her representative and stated for the record she wanted to represent herself. The arbitrator was in no position to postpone the hearing a third time especially when [REDACTED] had ample time between the original date of the complaint, the rescheduling, and the day of the hearing to have someone appear from the Union to represent her as required in this SPNC-0016-2018 complaint.

PROCEEDINGS:

The Grievant [REDACTED] gave his Opening Statement: Tr. P-20-21 and Closing Argument: Tr. P-48-49.

The Accused [REDACTED] gave her Opening Statement: Tr. P- 21-23 and Closing Argument: Tr. P-49-52

Closing Argument from the Employer: Tr. P-52-53

Witness: [REDACTED] testified he chaired the meeting on 9/11/18 and heard the accused discuss her prior 13.2 complaint, he also testified that he was present at a prior 13.2 hearing involving the grievant and accused. Direct Examination: Tr. P- 25-27. Cross Examination: Tr. P-28-34. His testimony was credible.

Witness: [REDACTED] during Direct Examination: Tr. P-35-36. Cross Examination: Tr. P-37. testified he was present on 9/11/18 but couldn't recall the exact words, he also gave testimony that he

heard the grievant inform the accused if she continued, she would be cited. His testimony was credible.

Witness: [REDACTED] during Direct Examination: Tr. P-38-40. Cross Examination: Tr. P-40-42. testified he was present on 9/11/18 and heard the accused discuss her prior 13.2 case. His testimony was credible.

Witness: [REDACTED], during Direct Examination: Tr. P-43-44. Cross Examination: Tr. P-44-47. testified he was present on 9/11/18 and heard the accused discuss her prior 13.2 complaint. His testimony alluding to the 13.2 issue on September 11, 2018 was credible.

DISCUSSION:

Item II. This Grievance Alleges: B. Retaliation Related to Filing or Supporting a Prior Discrimination or Harassment Complaint Based on one or more of the Categories covered by Section 13.2 was properly heard on October 30, 2018. The grievant and the accused have both been involved in 13.2 hearings before and are aware in 13.2 grievances, these are sensitive issues which are held in complete confidentiality.

Retaliation is forbidden. What is said in a 13.2 hearing is really meant to stay in a 13.2 hearing. The accused violated her responsibility in confidentiality and retaliated against [REDACTED]

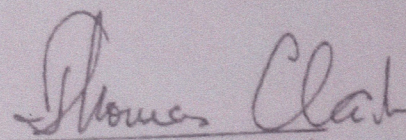
DECISION:

[REDACTED] is hereby found guilty of Complaint Number SPNC-0016-2018 (B) Retaliation. (Section 111.5) Confidentiality. PCSGHB 2014-2019 P.16.

The minimum discipline for any individual found guilty of retaliating against someone for complaining of Prohibited Conduct shall be one month and attending Diversity Training without pay. Letter of Understanding "C" P.21. Stacey Rodgers is forbidden to travel outside of the industry.

Also, [REDACTED], having been found guilty shall, prior to returning to work, be required to review an approved training video (such as "EEO Shapes"), without pay, and sign a statement agreeing to abide by the Policy and not to engage in Prohibited Conduct in the future.

It is hereby so ordered:



Thomas A. Clark
Northern California Area Arbitrator

Dated: November 8, 2018