

Jury awards \$93.6 million to former operator of Port's Terminal 6 for losses due to dock workers' unlawful labor practices

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A federal jury Monday awarded \$93.6 million to the former operator of the Port of Portland's container terminal, finding the dock workers union sabotaged shipping traffic and caused productivity to plummet through years of labor slowdowns and stoppages.

The Philippine-owned ICTSI Oregon, which signed a 25-year lease in 2010 to operate Terminal 6, left the port in March 2017, idled by the labor strife it says the International Longshore and Warehouse Union and its Local 8 chapter encouraged.

That marked the effective end to the frequent use of Oregon's only container terminal accessible by large ocean-crossing cargo vessels. Terminal 6 now mostly runs as a truck-to-train operation with containers unloaded from trucks onto trains bound for the ports of Tacoma and Seattle.

The verdict followed a two-week civil trial before U.S. District Judge Michael H. Simon in Portland and years of protracted disputes in court and before the National Labor Relations Board.

"The ILWU went too far. They have given that middle finger to the port, to the National Labor Relations Board and to its own community, and you are here to hold them accountable," ICTSI's lawyer Amanda T.

Gamblin told jurors in her closing argument.

The union "beat ICTSI into the ground," Gamblin said.

But the union's lawyers said declines in productivity at Terminal 6 resulted from a range of factors: market forces, geographic limitations of the port situated so far inland with a shallow river depth for big vessels and dismissive management that caused a demoralized workforce.

"ICTSI is trying to use the ILWU as its piggybank," attorney Susan J. Harriman argued on behalf of the union. "It decided to make its money from this lawsuit, instead of making Terminal 6 a success."

The international union and its Portland chapter had been clashing for years with the terminal operator, starting shortly after the port hired the company to run its container terminal.

In 2012, longshore workers claimed ICTSI Oregon should give them the jobs plugging, unplugging and monitoring refrigerated containers, taking the so-called "reefer" work away from an electricians union.

The large marine terminal on the Columbia River, about 100 miles inland from the Pacific Ocean, was equipped to unload and load seagoing vessels and to store incoming and outgoing containers while awaiting shipment by land or sea.

The "reefer" containers have electrically powered refrigeration units attached to safely ship perishable agricultural commodities and other goods all over the world. Workers had to plug the containers into electrical receptacle banks at the terminal and periodically check to make sure they were kept at the proper temperatures.

The terminal operator argued that the union deliberately disrupted

work to get the company to grant longshore workers the sought-after "reefer" jobs: truckers driving at a walking pace, workers taking extensive time loading containers and others showing up late, delaying crane workers from getting started.

A judge already determined that the union was guilty of unlawful labor practices from May 21, 2012, through Aug. 13, 2013, to get the work on the refrigerated containers.

The eight-member jury was asked to decide if those unlawful practices continued through March 2017 and if damages should be awarded for losses suffered.

Jurors found the unlawful labor practices did continue and awarded the damages after deliberating for about 3 ½ hours. It also found that the international union and local chapter were jointly liable, with ILWU responsible for 55 percent of the damages, and Local 8, the other 45 percent.

According to testimony, Leal Sundet, one of the leaders of the international union, had threatened the port operator's chief executive officer Elvis Ganda on May 21, 2012, that "I am the guy who can (expletive) you badly" and that ICTSI "would pay the price" if it didn't give the refrigerated container work to the longshore workers union.

Three days later, Local 8 President Jeff Smith demanded ICTSI assign the dockside refrigerated container jobs to his workers and if not, the union would put ICTSI out of business and run every Hanjin container out of Portland, according to ICTSI's lawyers.



South Korea's Hanjin Shipping, the terminal's largest customer, and Hapag Lloyd America, its second-largest customer, ceased using the terminal in the 2015. The two accounted for about 98 percent of the terminal's business.

ICTSI sought damages of between \$97 and \$135 million for its estimated operating losses.

The company shut down its container operations at Terminal 6 on March 31, 2017, and laid off much of its staff after major shipping companies pulled out of Portland.

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The union argued that the company's estimated damages were based

on faulty assumptions and inflated numbers and urged jurors to award no more than \$1.3 million.

Harriman, the union's lawyer, said its workers "wanted to succeed but they were treated like donkeys and belittled and fired without cause. ... They helped build Terminal 6 and they literally broke their backs trying to make Terminal 6 a success."

She said any job actions were related to collective bargaining for a new union contract, which was lawful. "Labor and employment practices were driving slowdowns, not reefer work," she told jurors.

After the jury returned the verdict, Harriman urged the judge to formally delay entering the judgment.

The union intends to argue that the damage award would impose a heavy financial burden with serious consequences, including possibly bankrupting the longshore workers union, she said.

The judge allowed both sides to submit briefs on the matter and said he'd wait until next Tuesday before entering a judgment.

"We are grateful to the jury for its diligence in dealing with a very complicated case and holding the appropriate parties responsible for violations of the law that resulted in the critical impairment of operations at Oregon's only container terminal," said Elvis Ganda, president & chief executive officer of ICTSI Oregon, Inc. "The jury's decision validates ICTSI's determination to seek justice in an unfortunate situation that impacted many local businesses, communities and the people that depended on Terminal 6 as a vital connection to international trade."

-- Maxine Bernstein

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