

IN THE MATTER OF A CONTROVERSY )

Between )

INTERNATIONAL LONGSHOREMEN'S AND )  
WAREHOUSEMEN'S UNION, LOCAL 13, )

and )

PACIFIC MARITIME ASSOCIATION. )

Involving the firing of M.U. )  
gang No. one and M.U. gang )  
No. two, hatches No. 1 and )  
No. 2B, June 26, 1987, )  
SS SALTA, Berth 221, )  
Terminal Island, California. )

SC-45-87

OPINION AND DECISION

Of

GEORGE LOVE,  
Area Arbitrator

Wilmington, California.

August 4, 1987

The hearing was held July 2, 1987, 627 North Fries Avenue, Wilmington, California. Each party was afforded full opportunity for the examination and cross-examination of witnesses, and for presentation of relevant argument and documents. A Certified Shorthand Reporter was in attendance and recorded a transcript of the hearing.

#### APPEARANCES

FOR THE UNION: Jim Gyerman, Buddy Reynolds, John Espinosa, Steve Bebitch and Donald Hosking.

FOR THE EMPLOYER: Jan Hays and Charley Young, P.M.A. and Tom Murphy and Dennis Lenart, S.S.A.

#### ISSUE

Were the holdmen and supporting dock personnel properly fired after the deckmen in each of the two gangs were properly fired, if not, what shall the remedy be?

#### BACKGROUND

The gang in hatch 2B stoodby at 11 a.m. when the deckmen stoodby claiming an unsafe work area. Arbitrator Peter Wright was called out, held a hearing during the lunch hour and found that an unsafe situation did not exist. When the gang returned at one o'clock the deck men did not agree with the Arbitrator's decision, refused to turn to and were properly fired. The deck man working #one hatch then shut the power off his winches and went to No. 2 hatch and when he ignored his foreman's

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order to return to his work, was fired, properly so. The other winch driver was not present, the foreman searched for him and did not find him. There were three holdmen absent in each gang at the time of these happenings after one p.m. They all went onto the dock, volunteers to drive winches did not respond to an asking for that, two crane operators were not asked to drive winches and replacements for the fired deck men were not ordered.

#### DISCUSSION

The Union did not claim that the deck men were improperly fired, their claim is that the Company violated specific terms of the contract when Company failed to place orders in the dispatch hall to replace the four deckmen, and instead released all others tied to the two gangs. The Union cites a C.L.R.C. interpretation of the contract as applying here and demonstrating how this dispute should have been handled, that cited provision from the minutes of C.L.R.C. meeting No. 20-1961, item No. 20, reads as follows:

#### "Ordering of replacements - Los Angeles:

"The Local Union contended that replacements must be ordered, regardless of the time, whenever a man is fired, resulting in an agreed to manning scale being reduced. The Local Employer's basic position was that replacements will be ordered at his discretion."

"The Committee agreed that replacements shall be ordered and that the gang will work short handed until the replacements arrive. In accordance with C(12) of the August 10, 1959 Memorandum of Understanding replacements will be paid for time worked or the 4 hour minimum whichever is greater. If replacements are not available, the gang will work short handed."

This C.L.R.C. ruling is clear enough and the Company disregarded the first provision of the ruling, that replacements shall be ordered, then the gang will work short handed, how paid, etc.

Thomas Risler, the ship foreman that day, appeared as a witness for the Company, he testified that he believes the hall is to be called to replace fired ones, he did not call, no one instructed him to call, he did not ask the superintendent to call replacements, he did not ask two crane operators on his payroll to shift to the winches. That the superintendent told him to let everyone go; that hatch boss Coffee called the hall to see if his missing winch driver was there that three holdmen were missing from each gang.

Dennis Lenart, the Company superintendent on the job that day, appeared as a witness for the Company, he testified that he did not nor did he instruct anyone else to call replacements for the fired ones, that when no one would agree to a promotion to winch driver-hatch tender all members of the two gangs were fired, that none of the hole men, swingmen or dock complement workers had refused to turn to, they would be unable to work without winch drivers however.

Buddy Reynolds, Union B.A., represented the Union on the job that day, appeared as a witness for the Union, he testified that at one o'clock he informed the men, in front of Company supervision, that they had lost the arbitration and to go back to work whereupon everyone did go aboard, very briefly thereafter the deckmen from M.U. 2, came back on the dock saying they still felt the work area was unsafe and would not turn to, at that point Foreman Risler said the two had been fired for refusing to work as directed, then Mr. Patrick Advice, a Company superintendent, stated that the whole gang was fired, that he informed Risler and Advice that they could not fire the whole gang because of the winch drivers, Mr. Advice then stated that he was not going to order replacements because he would probably never get them; that he did observe the gang in No. 1 hatch working and that gang was also fired, that he again told Mr. Advice that he could not fire the whole gang on account of the deck men, Mr. Advice then said everyone, ship and dock was fired. That the hammerhead crane, manned with two crane operators could have been shifted into this operation; that all the workers, other than the fired four deckmen, stated that they were willing to go to work, this was after Mr. Advice said they were all fired; that all of these events happened about 1:20 to 1:30 p.m.

The Employer believes that the firings were proper, in accordance with Sections 17.71, 3.13, 11.445, 17.57, 3.31.

#### OPINION AND DECISION

The record made here and the fact situation shown in that record was fully considered, in length. First of all the opinion reached, as to the hatchtender and winch driver of each gang being fired, is that the contract cited and argued by the Employer, supports the argument that all four of them were properly fired.

The record also shows that the Company permitted or tolerated a three on three off hole man operation, plus one deckman off at hatch no. 1, the foremen were aware of this, an issue of this was not presented or complained of, so the necessary manning to continue work, as it had been conducted prior to firing the deckmen, was present. The hatch log of hatch No. M.U. 1, the second gang fired, shows that two crane operators were on that gang payroll and were paid 9 hours each, those two crane operators should have been placed as winch drivers in gangs M.U. 1 and M.U. 2, after replacements had been ordered for the fired deckmen.

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The action of management, exercising discretion, a decision not to order replacements, deprived the hole men and supporting units of their contractual rights and proper payment of wages.

In summary, the C.L.R.C. decision directs that replacements shall be ordered, if none are available and work cannot continue or endure, a different fact situation will arise.

The Employer cited sections of the contract are not pertinent to the fact situation here.

The six absent hold men were not identified nor was action against them, as to being made whole, requested.

DECISION

The Company did violate terms of the contract, viz, C.L.R.C. Ruling of October 10, 1961, meeting No. 20, item No. 20.

The hole men and supporting dock help which were fired in this incident shall be paid for the balance of that shift.

  
George Love, Area Arbitrator

DATED: August 4, 1987

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