

Arbitration Award 11/18/1949 On Supercargo

In the matter of

PACIFIC MARITIME ASSOCIATION (SOUTHERN AREA)

and

MARINE CLERKS ASSOCIATION LOCAL 63, I.L.W.U.

COAST ARBITRATOR'S AWARD

November 18, 1949

APPEAL FROM AWARD MADE BY PAUL PRASOW, AREA ARBITRATOR, SOUTHERN CALIFORNIA, OCTOBER 12, 1949, ON SUPERCARGO

The Prasow award and decision on supercargoes reads:

"Upon full consideration of all the information and argument of the parties on the issue involved, it is the decision of the Area Arbitrator that the American President Lines violated the Clerks Agreement by having a Superintendent of Operations perform the duties of a Marine Cleak on supercargo from January 17, 1949, to the present time.

The Employers are now appealing this award and decision to the Coast Arbitrator. The minutes of the Coast Clerks Labor Relations Committee, dated October 20, 1949, contain the following motion, which was introduced by the Employers, and on which the Employers voted "Yes" and the Union voted "No":

"That the Prasow award of October 12, 1949, on Supercargoes be set aside on the ground that it conflicts with the Master Agreement." The Master Agreement for Clerks, Section XVI, paragraph 5 reads in part as follows:

"It shall be the duty of the moving party in any case brought before the Coast Arbitrator under the provision of this paragraph to make a prima facie showing that the decision in question conflicts with this agreement, and the Coast Arbitrator shall pass upon any objection to the sufficiency of such showing before ruling on the merits.

A hearing on this matter was held before the Coast Arbitrator.

The Employers argue that the Prasow supercargo award conflicts with the Master Agreement in that the Area Arbitrator decided an issue not submitted to him. At pages 203 to 206 of the Prasow Transcript, a discussion on this question took place between the parties. It seems clear to the Coast Arbitrator that both parties did agree that the Arbitrator could determine the issue as one which would include a determination of whether a violation of the agreement did or did not exist "until the present time". That being the case, the fact that the specific incident occurred prior to the writing of the present agreement between the parties is not controlling. The fact is that both parties agreed that the Arbitrator could find that a violation did or did not exist up to the present time, which includes therefore the period under the present agreement.

Another objection raised by the Employer is that the Award violates Section II (a) of the Master Agreement. The reasoning of the Coast Arbitrator set forth in his October 18, 1949, decision applying to Hatch Watchmen, at pages 2 to 6, is applicable on this point in this appeal on the Supercargo Award. For the same reasons set forth in the Hatch Watchmen Award, the Coast Arbitrator finds that no violation of the Coast Agreement on this point exists, in so far as the Supercargo Award is concerned.

The Employers endeavored to establish the fact that no substantial evidence existed to sustain the Area Arbitrator's Award, and that therefore there was a violation of Section XVI, paragraph 6, of the Master Agreement. Again the principles set forth by the Coast Arbitrator in the October 18, 1949, Hatch Watchmen Award, pages 6 to 8, would apply in the case now before him. The Coast Arbitrator has studied such portions of the record in the supercargo case made before the Area Arbitrator as he was requested to do by the parties at the hearing on this issue. It is not the function of the Coast Arbitrator to substitute his judgment for that of the Area Arbitrator, except in such cases as there has been a conflict with the Master Agreement and the Coast Arbitrator has then the duty of determining the issue on its merits. Where substantial evidence is available to sustain the area award, the Coast Arbitrator should do so, and in this case the Coast Arbitrator does not find that the Area Arbitrator's decision on supercargoes was not made on such a basis.

The Coast Arbitrator therefore rules that a prima facie case has not been made that the Prasow Award on supercargoes conflicts with the Master Agreement, and the Coast Arbitrator therefore denies the appeal.

/s/ Sam Kagel, Coast Arbitrator