PACIFIC MARITIME ASSOCIATION

Arbitration Award 04/03/1939

IN THE MATTER OF A CONTROVERSY
BETWEEN
WATERFRONT EMPLOYERS ASSOCIATION,
COMPLAINANTS,
AND
INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,
DISTRICT NO. 1,
RESPONDENTS

Involving the right of employers to establish the size of sling loads which they consider best suited to the conduct of their business, limited only by provisions of Paragraph 11, subdivision (h) and subject to the requirement that they shall not be inimical to the health or safety of the employees.

ARBITRATOR'S AWARD

Mr. Gregory Harrison WAYNE L. MORSE
For Complainants Coastwide Arbitrator

Mr. Harry Bridges
Mr. H.P. Melnikow
For Respondents

Eugene, Oregon

April 3, 1939

ARBITRATION AWARD

1.ISSUE

The request for an arbitration of the issue involved in this case was made by the employers in accordance with the rules governing the procedure to be followed in raising coastwide issues, adopted by the parties on March 7, 1939.

The issue as submitted by the employers is: Are the employers entitled to establish the size of sling loads which they consider best suited to the conduct of their business, limited only by the provisions of Paragraph 11, subdivision (h) and subject to the requirement that they shall not be inimical to the health or safety of the employees?

An arbitration hearing on the issue was held in San Francisco, California, on March 9, 1939, at which hearing both parties to the dispute presented evidence, testimony, and argument in support of their respective positions, and subsequent to the hearing counsel for each side filed a brief.

II.DECISION

It is the decision of the arbitrator that under the agreement of October 1, 1938, the employers are not entitled to establish the size of sling loads which they consider best suited to the conduct of their business, limited only by the provisions of Section 11(h) of the agreement, and subject to the requirement that they shall not be inimical to the health or safety of employees.

At the outset of this statement of the reasons in support of the decision in this case, the arbitrator wishes to stress the point that the language of the agreement of October 1, 1938, is controlling in the premises. Thus, to paraphrase the language used by Arbitrator Jesse Epstein, in his award of October 23, 1938, relative to the status of the agreement of February 4, 1937, the arbitrator in the instant case wishes to state that the agreement of October 1, 1938, as its language clearly shows, amended the agreements of October 12, 1934, and February 4, 1937, by making certain changes and additions. It consists, however, of a total and complete agreement that can be read and understood without reference to the agreements of October 12, 1934, and February 4, 1937.

It, therefore, is quite immaterial whether the agreement of October 1, 1938, be considered amendatory or substitutional of the agreements of February 4, 1937, and of October 12, 1934: the result is precisely the same. The agreement of October 1, 1938, thus becomes, and is, the basic point of reference in determining the rights and duties of the disputants in this proceeding.

The arbitrator has studied with great care the record of this case and he appreciates the fact that there is much merit in the contentions presented in the able brief by counsel for the employers. However, the arbitrator has concluded that the contentions of the employers fail to take into account the full legal effect of the differences in language between the agreement of October 1, 1938, and previous agreements. It is the arbitrator's conclusion that the differences in language between the agreement of October 1, 1938, and the award, or agreement, of October 12, 1934, are so vital that the several awards handed down under the agreement of October 12, 1934, cited by counsel for the employers in support of his contentions, have little application to the issue in the instant case.

One vital difference between the agreement of October 1, 1938, and previous agreements is that there was inserted in the agreement of October 1, 1938, a new Section 11(h), which reads as follows:

> "Loads for commodities covered herein handled by longshoremen shall be of such size as the employer shall direct, within the maximum limits hereinafter specified, and no employer after such date shall direct and no longshoremen shall be required to handle loads in excess of those hereinafter stated. The following standard maximum sling loads are hereby adopted:"

There then follows a long list of maximum sling loads for the so-called standard commodities. Rule 11(h) then concludes with the following paragraph:

> "The purpose of the parties in negotiating this scale of maximum loads for standard commodities, is to establish a reasonable loading and discharging rate under the working conditions applicable to the operation, including the number of men used. It is agreed that the employers will not use the maximum loads herein set forth as a subterfuge to establish unreasonable speed-ups; nor will the I.L.W.U. resort to subterfuges to curtail production."

It is the conclusion of the arbitrator that Section 11(h) in the agreement of October 1, 1938, has the effect of modifying the literal meaning of Section 11(d) of the agreement, especially when Section 11(h) is read in conjunction with Section 11(b). Section 11(d) reads as follows:

> "The employer shall be free, without interference or restraint from the International Longshoremen's and Warehousemen's Union to introduce labor saving devices and to institute such methods of discharging and loading cargo as he considers best suited to the conduct of his business, provided such methods of discharging and loading are not inimical to the safety or health of the employees."

It is to be noted, as pointed out by counsel for the union, that Section 11(b) of the agreement of October 1, 1938, differs materially from Section 11(b) of the agreement of October 12, 1934. In the 1934 agreement, Section 11(b) provided, "The employees must perform all work as ordered by the employer. Any grievance resulting from the manner in which the work is ordered to be performed shall be dealt with as provided in Section 10." However, Section 11(b) of the agreement of October 1, 1938, provides:

> "The employees shall perform work as ordered by the employer in accordance with the provisions of this agreement. In case a dispute arises, work shall be continued pending the settlement of same in accordance with the provisions of the Agreement and under the conditions that prevailed prior to the time the dispute arose and the matter shall be adjusted, if possible by the representatives of the International Longshoremen's and Warehousemen's Union and the Employers, who shall adjust the dispute as quickly as possible; in case they are unable to settle the matter involved within twenty-four (24) hours, then, upon request of either party, the matter shall be referred to the Labor Relations Committee."

It is the interpretation of the arbitrator that the difference in language between Section 11(b) of the award of October 12, 1934, and the subsequent agreements of February 4, 1937, and October 1, 1938, shows an intention on the part of the parties, as contended by counsel for the union on page 6 of his brief, to limit the employers' powers to order work to be performed and to limit the obligation of the employees to carry out such orders by expressly providing that such orders must be in accordance with the provisions of the agreement, including disputes that might arise over sling loads. Further, the difference in the language between the two sections, when read in connection with Section 10(d) of the agreement of October 1, 1938, shows an intention on the part of the parties to vest in the Labor Relations Committee procedural power to investigate and adjudicate all grievances and disputes relating to working agreements, including disputes over sling loads.

It is true that Section 11(d) standing alone, as far as its literal meaning is concerned, would seem to vest in the employers the right to order sling loads of whatever size they think would be best suited to the conduct of their business so long as the safety and health of the employees are protected. However, the literal meaning of Section 11(d) must give way to the rules of equitable construction when the section is read in conjunction with Sections 10(d), 11(b) and 11(h) of the agreement of October 1, 1938.

It is clear that Section 11(h) fixes the maximum limits for the size of sling loads for the standard commodities listed therein on a coastwide basis. In the last paragraph of the rule, the parties to the agreement state that their "purpose in negotiating this scale of maximum loads for standard commodities, is to establish a reasonable loading and discharging rate under the working

conditions applicable to the operation, including the number of men used." This statement of purpose shows that the factors of health and safety were not the only factors which the parties took into account when negotiating the maximum load scale.

It would still follow, of course, that should any maximum sling load set out in Section 11(h) prove to be inimical to the health or safety of the workmen when applied to the conditions prevailing at any given port, dock or job, the employees would have a right under Section 11(b) of the agreement to appeal to their Labor Relations Committee for an adjustment of the matter. Likewise, it would appear from the language of the last paragraph of Section 11(h) of the agreement that if any of the maximum sling loads set out in the section should prove to be unreasonable when applied to the working conditions applicable to a given operation, including the number of men used, the issue can be raised through the procedure provided for in Section 11(b), reaching ultimately, if necessary, a consideration of the matter by the coastwide arbitrator.

In other words, it is the conclusion of this arbitrator that the language of Section 11(h) of the agreement of October 1, 1938, when read in conjunction with the other sections of the agreement, shows that it was the intention of the parties to place a maximum limit on the size of sling loads for standard commodities beyond which the employers cannot go, irrespective of health and safety factors.

Further, the language shows an intention on the part of the parties to apply an additional criterion in the fixing of the size of sling loads, namely the establishment of a reasonable loading and discharging rate under the working conditions applicable to the operation, including the number of men used. Such a criterion is necessarily a flexible one.

However, it is the arbitrator’s conclusion, after noting from the record of the case that disputes over the sling load issue have been of long standing in the industry, that the parties adopted such a flexible standard in addition to the health and safety standard, in a sincere endeavor to remove one of the greatest causes of friction within the industry.

If a serious attempt is made to settle differences over the size of sling loads by making use of the negotiating procedure provided for in the agreement, the new provisions of Section 11(h) of the agreement of October 1, 1938, will undoubtedly prove to be a real boon to harmony in the industry. Of course, if either side proceeds to act in bad faith, or violate the spirit of the last sentence of section 11(h), the section will tend to create additional strife.

The arbitrator not only interprets Section 11(h) of the agreement of October 1, 1938, to mean that the employers have a right to order the maximum sling loads set out in the section, subject to the aforementioned restrictions of health, safety, and reasonable loading and discharging rates in light of conditions applicable to a given operation, but he also interprets the section to mean, when read in conjunction with the entire agreement, that the same criteria should be considered in determining the size of sling loads for the loading and discharging of cargo not listed in the section, except that in the latter case the matter will necessarily have to be decided on a port basis through the Labor Relations Committee, rather than on a coastwide basis.

As counsel for the union points out on page 8 of his brief in a discussion of the effects of Section 11(h) upon the size of sling loads of commodities named in the section and those not included in the section, "The principle of joint control applies equally to both groups of commodities; the only difference lies in the character of machinery by which such control shall be administered—whether it is to be coastwise or local.

"In the case of the first group of commodities, those specified in Section 11(h), that joint control has taken the form of agreed-upon maximum standards which are coastwise in application, and therefore, except under certain conditions, not subject to local Labor Relations Committees.

"In case of the second group of commodities the parties, as yet, have not agreed upon mutually acceptable coastwise standards. But can it be seriously contended, just because no coastwise standards have as yet been established, that with respect to these commodities not included in Section 11(h) the principle of joint control is not recognized, that the Union forfeited its right to share in determination of reasonable loads and that the Employers have been absolved from all limitations (save for the requirements of Section 10(d))?"

It is the opinion of the arbitrator that the size of sling loads of commodities not listed in Section 11(h) are subject to the jurisdiction of local Labor Relations Committees in accordance with the provisions set out in Section 11(b), and that the same criteria—health, safety, and reasonable loading and discharging rates in light of the working conditions of a given operation—must be taken into account in settling any dispute which may arise within the industry over the size of sling loads.

In conclusion, the arbitrator wishes to state that he fully appreciates the fact that this decision will not end sling load controversies between the parties to the agreement. In the interests of a fixed, inflexible, and literal rule, he would have preferred to adopt the theory of the case as advanced by counsel for the employers. However, he was compelled by the record and by the language of the agreement itself to come to the conclusions reached in this opinion.

He is satisfied that if the parties will attempt without delay to negotiate through the machinery set up in the agreement, a supplemental agreement regulating the size of sling loads not now covered by Section 11(h), much future controversy will be avoided. He believes that if the parties will make further attempts to negotiate a supplemental agreement regulating the size of sling loads, they will more nearly carry out the spirit and intent of Section 11(f) of the agreement of October 1, 1938.

Respectfully submitted,

(Sgd) WAYNE L. MORSE

Coastwide Arbitrator