

Arbitration Award 06/10/1939

IN THE MATTER OF A CONTROVERSY BETWEEN

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION DISTRICT NO. 1, COMPLAINANTS

AND

WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST,

RESPONDENTS

Involving questions as to whether the Alaska Steamship Company is in violation of the agreement of October 1, 1938, as a result of its hiring hatch bosses or assistant foremen without giving preference to the members of the International Longshoremen's and Warehousemen's Union and without dispatching or hiring said employees through the hiring hall.

ARBITRATOR'S AWARD

Mr. Clifford O'Brien

Mr. Matt Meehan

For Complainants

Mr. Gregory Harrison

Mr. Edward G. Dobrin

For Respondents

WAYNE L. MORSE

Coastwide Arbitrator

Eugene, Oregon

June 10, 1939

ARBITRATION AWARD

1.

Facts

The Alaska Steamship Company, in the operation of its freight and passenger vessels from Seattle to Alaska, employees certain men whom the company designates as assistant foremen or hatch bosses. At a meeting of the Labor Relations Committee of the Port of Seattle, held on February 25, 1939, the union representatives charged the Alaska Steamship Company with a violation of the longshore agreement of October 1, 1938, because of the fact that the company hired the so-called hatch bosses or assistant foremen without giving preference to International Longshoremen's and Warehousemen's Union members and without dispatching the men through the hiring hall. The union requested a local arbitration of the dispute.

Immediately following the meeting of the Labor Relations Committee, on February 25, 1939, Mr. Harry R. Bridges, president of the district union, requested the Coastwide arbitrator to hold a hearing on the issue as to whether the union's controversy with the Alaska Steamship Company over the hiring of the so-called hatch bosses or assistant foremen should be arbitrated on a local or a coastwide basis. Such an arbitration hearing was held, and on April 6, 1939, the Coastwide arbitrator held that the controversy involved a coastwide issue. In support of his opinion the arbitrator stated:

"It is the opinion of the arbitrator that there is inherent in this dispute a basic interpretation of the agreement of October 1, 1938, and therefore the dispute should be arbitrated upon a coastwide basis. Section 9 of the agreement of October 1, 1938, provides in par that "In the event that any Labor Relations Committee or the parties hereto fail to agree on any question involving a basic interpretation of this agreement or any other question of mutual concern not covered by this contract relating to the industry on a Coastwide basis, such question, at the request of either party, shall be referred for decision to such Coast arbitrator . . . The Coast arbitrator shall have the power to determine whether any question in dispute involves a basic interpretation of the agreement and if the dispute in question is one of mutual concern relating to the industry and not covered by the agreement, whether it is of Coastwide or local application."

"Section 1 of the agreement of October 1, 1938, provides that "The following occupations shall be included under the scope of this agreement: Longshoremen, gang bosses, hatch tenders, winch drivers, boom men, burton men, sack-turners, side runners, front men, jitney drivers, lift jitney drivers, and any other person doing longshore work as defined in this section."

"It is clear that when the controversy over the hiring of the so-called 'gang bosses' or 'hatch bosses' or 'assistant foremen' by the Alaska Steamship Company of Seattle is arbitrated upon its merits, it will be necessary for the arbitrator to determine whether the work performed by the men involved is covered by any of the classifications or definitions of longshore work set out in Section 1 of the agreement of October 1, 1938. Such a determination will necessarily involve a consideration of the definition of longshore work itself. No question could involve a more basic interpretation of the agreement of October 1, 1938."

On May 10, 1939, an arbitration hearing was held in Seattle on the merits of the case. At that hearing the parties to the dispute requested the arbitrator to visit the Alaska Steamship dock and, in the presence of representatives of each side of the controversy, inspect the operations at the dock, including the work of the hatch bosses or assistant foremen. The arbitrator made such an inspection which lasted for approximately two hours. This award is based upon the transcript of record made by the parties at the hearing on May 10, 1939, the briefs of counsel subsequently filed, and the inspection of the operations made by the arbitrator as requested by the parties.

II

Issue

Is the Alaska Steamship Company in violation of the agreement of October 1, 1938, as the result of its hiring hatch bosses or assistant foremen without giving preference to the members of the International Longshoremen's and Warehousemen's Union and without dispatching or hiring said employees through the hiring hall?

III

Decision

It is the decision of this arbitrator that the Alaska Steamship Company is not guilty of a violation of the agreement of October 1, 1938, because of the fact that it has hired hatch bosses or assistant foremen without giving preference to the members of the International Longshoremen's and Warehousemen's Union and without dispatching or hiring said employees through the hiring hall.

The arbitrator's decision rests upon his finding that the preponderance of evidence in this case substantiates the employers' claim that the hatch bosses or assistant foremen perform supervisory and managerial services, rather than longshore work. The record of this case, plus the arbitrator's observations of the loading operations on the Alaska Steamship Baranof convinces the arbitrator that the work and duties of hatch bosses and assistant foremen do not fall within the definition of longshore work as set out in Section 1 of the agreement of October 1, 1938. That section reads as follows:

"The provisions of this agreement shall apply to all handling of cargo in its transfer from vessel to first place of rest, and the direct transfer of cargo from vessel to railroad car or barge, and vice versa, when such work is performed by employees of the companies parties to this agreement.

"It is agreed and understood that if the employers, parties to this agreement shall sub-contract work as defined herein, provisions shall be made for the observance of this agreement.

"The following occupations shall be included under the scope of this agreement: Longshoremen, gang bosses, hatch tenders, winch drivers, donkey drivers, boom men, burton men, sack-turners, side runners, front men, jitney drivers, lift jitney drivers, and any other person doing longshore work as defined in this section."

It was the contention of counsel for the union that the work of the hatch bosses or assistant foremen on the vessels of the Alaska Steamship Company is the same in all material respect as that performed by gang bosses in Portland and San Francisco. However, the arbitrator is satisfied that the preponderance of the evidence in this case does not support the contention of counsel for the union.

At the arbitration hearing on May 10, 1939, Mr. Meehan and Mr. O'Brien testified as to the duties of gang bosses. On pages 50, 51 and 52 of the transcript Mr. Meehan's testimony is recorded as follows:

"A. The gang bosses in Portland have the duty of seeing that they have a sufficient number of men on the gang as ordered by the employers; and, when he arrives at the ship, to see that he has the proper gear for handling the cargo, and trimming the gear in preparation of discharging or loading the cargo. He keeps the time of the men. Also he passes on the orders that he receives from the walking boss for the loading or discharging of cargo to the men under his supervision.

"Q. Is the gang boss paid more than a regular longshoreman?

"A. Yes.

"Q. How much more?

"A. He receives a ten cent differential in Portland, ten to fifteen cents.

"Q. So this will be clear, the employers call the hiring hall and ask for so many gangs at a certain vessel at a certain time, that correct?

"A. Yes. When they place the order they say that they want, say for instance, a 11-men gang, to be filled in later by -- the 11-men gang is the ship's gang they call them, and by that they want two winch drivers, a hatch tender and two sling-up men and six men in the hold.

"Q. When the dispatcher wants the same gang, No. 40, to fill that order, what does he do?

"A. He fills out, he places the name, the number of the gang, and the name of the foreman. He hands the pad to the foreman to be filled out with the names and numbers of the men who are to do the work.

"Q. When the men's gang is at its full complement he just fills in the names?

"A. That's right.

"Q. And if his gang is short a couple of men, what does he do?

"A. He hands that pad back to the dispatcher, and the dispatcher fills the pad from the "plug" board.

"Q. Then does the dispatching slip go back to the gang boss?

"A. Yes. It is handed to him and after he has started work he writes out the list of the men who are working in that particular hatch on the form that is submitted to him by the company.

"Q. He stays with his gang, does he not?

"A. Yes, he just works on the hatch."

On pages 68 and 69 Mr. O'Brien testified as follows:

"In San Francisco gangs are dispatched out of the hiring hall much in the fashion as testified to by Mr. Meehan. That is to say, the employers call the hiring hall and ask for a certain number of gangs composed of a certain number of men to appear at a certain vessel at a certain time.

"There is one distinction there. The employers there enjoy, in some instances, the privilege of what are known as preferred gangs, and they may call and ask for that particular preferred gang, or they may call for casual gangs, or for a mixture, preferred or casual gangs. In any event, each gang is what is known as a regularly constituted gang.

"The main distinction between San Francisco and Portland is that a San Francisco gang includes not only the ship's gang, but the dock gang; whereas, in Portland the gang is composed of the ship's men.

"In San Francisco each gang has a gang boss. He is paid a premium over other longshoremen in accordance with the agreement, of at least ten cents per hour on straight time.

"The dispatcher gives the dispatching slip dispatching the gang to the gang boss; and, as Mr. Meehan testified, if the gang is not already available the slip goes back and the gang is filled up from the "plug" board.

"At work the gang boss is in charge of his gang under the direction of the walking boss.

"The walking boss in San Francisco occupies a position essentially like that testified to by Mr. Meehan. The gang boss in San Francisco thus has charge of the detail of the work of his gang in the hold in which it is working, and also of the detail of the work of the dockmen in his gang who are working the cargo which comes to or from the sling of the hatch in which the ship gang is working."

In contrast with Mr. Meehan's and Mr. O'Brien's testimony as to the duties of gang bosses, Mr. Collins, one of the hatch bosses or assistant foremen working for the Alaska Steamship Company, testified as to the duties and tasks connected with his work. His testimony, which is to be found on pages 70-100 of the transcript, is substantiated in the main by testimony of other witnesses who testified for the employers. The testimony of the witnesses for the employers, taken in its entirety, was not successfully rebutted by the testimony presented by the union insofar as the employers' claim that there are marked differences between the work of assistant foreman and gang bosses is concerned.

The testimony makes clear that the work of assistant foremen is, in the main, supervisory and managerial, while the work of a gang boss is, for the most part, limited to directing the work of a gang in the given hatch but not in the capacity of a managerial representative of the employers. Rather, a gang boss is a longshoreman who acts as a go-between in carrying out working relationships between the gang and the walking boss. He functions somewhat as the gang's representative in handling working arrangements on the jobs with the walking boss and the employers' representatives. He is a longshoreman and does, in fact, do longshore work as defined in Section 1 of the agreement in that he participates, at least to some extent, in the handling of cargo along with the other members of the gang.

The arbitrator recognizes that a gang boss does do other things as well, such as seeing that the gear is in proper condition for handling the cargo, trimming gear, keeping time, and passing on the orders received from the walking boss and informing the men in the gang of the same. As a rule his work is limited to one hatch.

On the other hand, the duties of a hatch boss or assistant foreman, as employed on the Alaska Steamship Company's vessels, are vitally different from that of a gang boss as was made clear by the testimony of Mr. Collins. Similar testimony by other witnesses plus the arbitrator's observations of the operation of loading the steamer Baranof substantiates Mr. Collins' testimony that the duties of hatch bosses or assistant foremen are supervisory and managerial.

The record shows by a preponderance of the evidence that it has been the practice in the Port of Seattle for several years to employ hatch bosses or assistant foremen on the vessels of other shipowners. These assistant foremen are, in fact, assistant walking bosses rather than gang bosses. Depending upon loading conditions in a given instance they may supervise one or several hatches, one or several gangs. Further, they have assigned to them the very important managerial duty of keeping a careful record in a hatch book, introduced as employers' exhibit A and B, of the cargo stored, the time it took to store it, and the place of storing. They are called upon to supervise the

storing away of cargo and in so doing they must have a knowledge of the destination of the cargo so that it can be discharged with efficiency and dispatch.

The record of the case shows that assistant foremen must stay with ship until the job is done, even though that may require a "stretch of as long as thirty-six hours with little time off for rest". It is also to be noted that an assistant foreman takes over the duty of the walking boss whenever, for some reason, he needs to be relieved. Further, an employee may be assigned to a ship as an assistant foreman and when the next ship comes in he may be assigned to it as a walking boss. One other finding is a very important one, namely, the record shows that it is the practice of the Alaska Steamship Company to treat hatch bosses and assistant foremen as permanent or semi-permanent employees. During the winter season when business is slack more assistant foremen are used in the loading operations of a single ship than during the busy season when one hatch boss may supervise several hatches. By following such a practice the company is able to employ at least a majority of its assistant foremen the year around.

In addition to the record of this case the arbitrator is of the opinion that there are two decisions handed down by other arbitrators which serve as precedents in support of the decision in the instant case. The arbitrator refers to the decision of Hon. M.C. Sloss, dated March 28, 1935, relating to the status of walking bosses and the decision of Hon. John F. Quinn of April 1, 1935, relating to the status of timekeepers.

These two decisions were cited by counsel for the employers at the hearing on March 7, 1939, in support of counsel's contention that the issue was local rather than coastwide in nature. The arbitrator ruled that the decisions were not applicable to any determination of the question as to whether the controversy was local or coastwide. However, the two decisions are of some precedential value insofar as the merits of this case are concerned. In this case both parties were agreed that the work of a walking boss is not longshore work as defined in Section 1 of the agreement of October 1, 1938.

In his award of March 28, 1935, Judge Sloss ruled: 'walking boss' is included in the term 'gang boss', as used in Section 1 of the Award. The arbitrator rules further that a 'walking boss' is not included in the general term 'longshoreman', with which the enumeration of occupations in the second paragraph of Section 1 begins. If this word 'longshoreman' had been intended to cover all persons connected in any way with the loading or unloading of cargo, there would have been no need to enumerate the other specific occupations listed in Section 1, a number of which are more directly connected with longshore work than is the occupation of the 'walking boss'.

"My conclusion therefore is that a 'walking boss' is neither a 'gang boss' nor a longshoreman within the definition of Section 1 of the Award, and is not, to the extent of his work as a 'walking boss', governed by the provisions of the Award."

Therefore, in view of the fact that this arbitrator finds in the instant case that the work of hatch bosses or assistant foremen as performed on the Alaska Steamship Company's vessels is really that of an assistant walking boss and of similar supervisory and managerial nature, it follows that Section 1 of the agreement of October 1, 1938, does not include the work of hatch bosses or assistant foremen.

Arbitrator Quinn, in his decision of April 1, 1935, found as follows:

"As to when to start the mate tells the foreman or timekeeper and he in turn tells the men to turn to or start. It has been the duty of the timekeeper or foreman to report to the Stevedore Company the progress of the work of loading, including conditions on the dock or ship or among the loading crew that might nor might not expedite or retard the operation of the lading.

"He assists in seeing that orders of lumber for different consignees are kept separated and properly placed so that the same may be expeditiously removed and without confusion. Another duty concerns transportation for the employees to and from their work. When the loading place requires it, busses or launches are furnished by the company and the timekeeper looks out for the detail as to when and where the same shall be sent. This is not longshore work within the meaning of the 'Award'. This work of providing transportation is not done through the hiring hall. At one of the hearings this person was referred to "as a sort of a general foreman". He might also be called an assistant 'walking boss'

"It will be noted that a 'general foreman', 'walking boss' or 'foreman' or 'timekeeper' are not listed, that is such work is not specifically listed as longshore work. Not being listed the only way that such work could be concluded as longshore work would be by the words "and any other person doing longshore work as defined in this section." But his refers to "handling of cargo" which means the physical handling of cargo including signaling. Then again if 'gang boss' were intended to have covered everything included in the words 'foreman', 'walking boss', 'general foreman', or 'timekeeper' it would have been very easy to have so stated. Whatever supervision there is seems to have been studiously confined to that of a 'gang boss' and not referred to in any other capacity. 'Foreman', 'walking bosses', 'general foreman' or 'timekeeper', are words in common use and not to have used those terms where thousands of men are employed indicates that the omitting of naming of these positions was intentionally done. In other words, that it was not intended that such persons filling such positions should be included in the 'Award'.

"The 'Award' therefore permits and allows on the job a direct representative of the employing firm or company directly responsible to such company, who does not handle cargo or use physical or muscular effort in loading or unloading vessels, but who supervises, or assist in supervising, as these terms are commonly use, and assists in seeing that the work proceeds and keeps the time, together with other duties not in the category of longshore work as defined in the 'Award'.

"At one hearing it was stated that a 'timekeeper' was sort of a 'general foreman'. On a four gear ship he is in reality an 'assistant walking boss'."

In light of the foregoing excerpts from Arbitrator Quinn's decision of April 1, 1935, it becomes evident that there is clear authority in support of the arbitrator's finding in the instant case that the work of hatch bosses, assistant foremen, or assistant walking bosses, as performed on the Alaska Steamship Company vessels, is not longshore work with the terms of Section 1 of the agreement of October 1, 1938, but rather is supervisory and managerial in nature.

Therefore, the arbitrator finds that the Alaska Steamship Company is not guilty of a violation of the agreement of October 1, 1938, insofar as its procedure in hiring said employees is concerned.

Respectfully submitted,

(SGD) WAYNE L. MORSE

Coastwide Arbitrator