PACIFIC MARITIME ASSOCIATION

Arbitration Award 09/27/1935

ARBITRATION UNDER AWARD OF NATIONAL LONGSHOREMEN'S BOARD

September 27, 1935

M. C. SLOSS
Arbitrator for Pacific Coast Ports
on Basic Questions
1300, One Eleven Sutter
San Francisco, California

IN THE MATTER OF)
)
INTERPRETATION OF AWARD OF)
NATIONAL LONGSHOREMEN'S)
BOARD)
)
RELATING TO "HOT CARGO")

AWARD OF ARBITRATOR FOR PACIFIC COAST PORTS

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1.GENERAL NATURE OF PROBLEM PRESENTED

For a number of weeks there have been serious difficulties and controversies in San Francisco and other Pacific Coast ports in connection with the loading and unloading of "hot cargo". "Hot cargo", as the term is used by the parties, means cargo produced in plants, or originating in or destined for localities, or transported or to be transported by agencies, which are involved in labor disputes. These disputes are not between the employing stevedores and the longshoremen, but are between other employers and employees in crafts or trades other than that of longshoremen under the Award of October 12, 1934. Some of the instances of "hot cargo" which have given rise to controversy in the port of San Francisco are:

(1) Cargo manufactured in the plant of the Santa Cruz Packing Company at Oakland, where there is a controversy between the management and the Warehousemen's Union. Whether the existing situation is properly described as a strike or as a lockout is of no consequence in the present inquiry.

(2) Cargo transported by the vessels of the River Lines on which there is a strike of the Bargemen's Union.

(3) Cargo originating in or destined to British Columbia where there is a strike or lockout of longshoremen, British Columbia being outside the scope of the Award of the National Longshoremen's Board.

Other illustrations might be given, but these will suffice. The employers claiming that there has been and is an extensive and continuing refusal by longshoremen to load or unload "hot cargo" in Pacific Coast ports, and that such refusal constitutes a violation of the Award of the National Longshoremen's Board, have brought the matter before the arbitrator for decision.

II. QUESTIONS PRESENTED

The controversy has been under discussion between the employers and the I.L.A., and in the Labor Relations Committee for a considerable time. In the course of the discussion various contentions were raised on either side. In their request for a hearing the employers have set forth five questions to which they ask answers. They are as follows:

(1) Can a member of the I.L.A. violate the Arbitration Award of October 12, 1934 as an individual?

(2) Has a longshoreman who has violated the award forfeited his right to be employed thereunder until he ceases his violations and/or makes restitution for same?

(3) Have the I.L.A., or its members acting singly or in concert, the right under the award to refuse to handle cargo because of its origin or destination?

(4) Is it a violation of the award for members of the I.L.A. to refuse to pass through a picket line established by members of the Bargemen's union which is an affiliated union of the I.L.A. or any other affiliated union?

(5) If members of the I.L.A. refuse to handle "hot cargo" or otherwise work as directed by the employer, are the employers entitled to require the registration of additional men who will handle such cargo and so work?

Underlying them all is the fundamental issue whether, under the Award, the I.L.A. is, or its members are, justified in refusing to load or unload cargo otherwise unobjectionable, for the sole reason that such cargo comes from plants or places, or has been carried or is to be carried by transportation agencies, which are engaged in labor controversies with organizations or men other than the longshoremen affected by the Award of the National Longshoremen's Board. Some of the five questions, as presented, are not, in my opinion so phrased as to permit the direct affirmative or negative answer which the form of the questions seems to call for. I shall therefore, instead of undertaking to answer each of the five questions specifically, state my interpretation of the Award as it affects the fundamental question, and, incidentally, my conclusions on the separate questions so far as I think they are pertinent and capable of answer.

III. THE FACTS

At the hearing the employers presented a long list of alleged refusals by gangs of registered longshoremen to load or unload "hot cargo", resulting in the tying up of vessels for longer or shorter periods and the blocking of work on a number of docks. A critical situation unquestionably exists on the waterfront of San Francisco and other ports. It would be impossible to go into the details of every asserted instance of stoppage or prevention of loading or unloading without prolonging the inquiry until a decision would be of no benefit. Enough facts appear, however, by common agreement or admission of the parties to permit a ruling on the essential problems, without reference to the specific charges advanced by the employers, insofar as they are not admitted by the I.L.A. representatives.

It is not open to dispute that for a number of weeks there has been repeated and extensive obstruction of the loading and unloading of vessels and of their movements, through the refusal of many registered longshoremen to handle so-called "hot cargo" for loading or unloading. It appears that on August 16, 1935 a vote by ballot was submitted to the membership of the Pacific Coast District of the I.L.A. on the question whether the members should or should not handle cargo coming from or going to British Columbia. The majority vote for the entire District was in the negative. In local 38-79 (San Francisco) the vote was 2427 "No" and 287 "Yes". At a meeting of the Labor Relations Committee, held on Monday, September 23 rd, the President of the San Francisco Union stated in effect that the members of the local union were bound by that vote, and that such members are not handling and will not handle cargo coming from or going to British Columbia. At the hearing counsel for the I.L.A. stated that "a good many" of the registered men would not handle "not cargo", and while he did not know whether this statement would apply to at least a majority of the men, he thought that in certain ports it would. It also appears that all but a small number of the registered longshoremen are members of the I.L.A. It was also practically conceded that in numerous instances entire gangs or successive gangs of longshoremen regularly dispatched from the hiring hall had refused to go to work when finding there was "hot cargo" to be handled or had left the job, before the loading or unloading was completed, when asked to work "hot cargo".

Other facts will be referred to in connection with particular contentions made.

IV. IS THERE A RIGHT UNDER THE AWARD TO REFUSE TO WORKSOLELY BECAUSE "HOT CARGO" IS TO BE HANDLED?

This is the fundamental question above referred to. In my judgment it must be and it is answered in the negative. A refusal to handle "hot cargo" (if, as is assumed for the moment, there is no other ground for refusal) is an effort to exert the pressure of obstructing loading and unloading of vessels on the employing stevedores and shipowners, for the purpose of assisting other crafts or unions in obtaining what they seek from other employers. This purpose is akin to that sought by a sympathetic strike. Whether or not a sympathetic strike is lawful, in the absence of a contract inconsistent with it, is not the question. Here the

parties have made such a contract. Under the Award of the National Longshoremen's Board, that Award constitutes a series of agreements between the I.L.A. and the various associations of employers who were parties to the Award. The Award thus established an agreement specifying the terms and conditions on which longshore work was to be done in Pacific Coast ports, and was and is binding upon both parties. So long as that agreement is in force, neither party has a right to violate it for reasons which are foreign to the relations of the parties and to the conditions upon which they agreed, but are directed to some external conflict between other parties.

V. CAN THE REFUSAL TO WORK "HOT CARGO" BE JUSTIFIED ON ANY OTHER GROUND?

The I.L.A. representatives make several points in support of the position that the acts above recited are not in violation of the Award.

(a)Individual or collective action:

It is argued that under the Award an individual longshoreman has the right to accept or refuse work for any reason, good or bad, or for no reason. This is undoubtedly true, but, as I pointed out in my award rendered March 19, 1935,

"There is a plain distinction between individual cessation and an organized or collective stoppage of work. Such collective or combined stoppage is not consistent with an observance of the Award."

It is perfectly clear, from the admitted facts in this case, that what has been done goes far beyond the exercise by individuals of their personal right to accept or refuse jobs. clearly the repeated and continuing refusal by numbers of men constituting gangs to work "hot cargo" and the cessation of work by gangs already on the job when the handling of "hot cargo" became involved, constitute collective or combined action by the groups concerned.

This conclusion is fortified, if that were necessary, by consideration of the British Columbia cargoes, which, by the vote of the membership, are not to be handled.

The reference in my award of March 19th to a stoppage of work by one gang, promptly corrected by the Union officers "so that the work may continue without interruption" obviously has no application to the situation here presented.

(b) Can longshoremen violate the Award or can there only be a violation by the Officers of the organization in their representative capacity?

It is contended that there can be no violation of the Award unless it is shown that the Officers of the Union directed the men not to work; that if the men of their own motion refuse to work, even against the advice or orders of their officers, the men as individuals are not guilty of any violation. I hold that this position is not tenable. The Union is a voluntary association. The Officers act as representatives and agents of the members. If an agreement is made by the representatives, acting within their authority, the agreement is that of the group and of its members. It cannot be that the agent making a contract is alone bound by it and that his principal is not.

(c)Picket lines, armed guards, etc.

It is sought to justify the acts of the longshoremen upon the ground that picket lines before the docks on which "hot cargo" was to be loaded from or to vessels of the River Lines were being maintained by members of the Bargemen's Union which was involved in the controversy with the River Lines. The Bargemen's Union is affiliated with the I.L.A. It is claimed that the men were justified in refusing to go through a picket line because going to work under such conditions would be "inimical to the safety or health of the employees". The provision of Section 11, subdivision (d) of the Award of the National Longshoremen's Board gives the employer the right 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 or loading are not inimical to the safety or health of the employees". The presence of a picket line has no relation to "methods of discharging and loading" instituted by the employer. But, apart from this, I am satisfied that the real ground and basis for the refusal to work was the unwillingness to handle "not cargo", and not the presence of the picket lines.

A similar contention is made with respect to the presence of armed guards on a vessel of the River Lines moored at a dock at which there lay another vessel or vessels to be loaded or unloaded. Here, too, I conclude the dispute concerning "hot cargo" was the true and only reason for the refusal to work.

VI.CONCLUSION

The foregoing discussion answers the fundamental question presented and also, I think, sufficiently answers Questions 1, 3 and 4.

Question 2 asks for a ruling which I think is outside of my authority under the Award. Subdivision (c) of Section 11 of the Award covers the case of discharge of a longshoreman by an individual employee and provides a remedy by appeal for a man so discharged. Question 2 goes further and seeks a ruling whether a man may under certain conditions be held to have forfeited his right to be employed at all under the Award, i.e., by any employer. I do not think that as arbitrator I am authorized by the Award to

make any such sweeping declaration. I suggest that the establishment of rules providing appropriate penalties for violation of the Award on either side is a proper matter for consideration by the Labor Relations Committee.

Question 5 relates to the right to have additional men registered to do work which the registered man will not do. Under Section 10, subdivision (b), as interpreted by counsel for the I.L.A. at the hearing, the employer is authorized "to employ anybody he sees fit" if there is no one on the registered list who is qualified, ready and willing to do the work. I think this interpretation is correct. This will take care of the case, if it should arise, of an exhaustion of the registered list without obtaining enough men ready and willing to do the work.

The general question of registering additional men involves problems other than those presented and argued at the hearing on the present dispute, and a ruling on it should not therefore be made at this time.

(Signed) M.C. Sloss

Arbitrator for Pacific Coast Ports