PACIFIC MARITIME ASSOCIATION

Arbitration Award 10/18/1949

In the Matter of

PACIFIC MARITIME ASSOCIATION (SOUTHERN AREA)

and

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

COAST ARBITRATOR'S AWARD

October 18,1949

ISSUE: APPEAL FROM AWARD MADE BY PAUL PRASOW, AREA ARBITRATOR, SOUTHERN CALIFORNIA, SEPTEMBER 14, 1949, ON HATCH WATCHMEN

The following question was submitted to the Area Arbitrator, Southern California, by the Marine Clerks Association, Local 63, and the Southern Area, Pacific Maritime Association:

"Has the American President Lines violated the Clerks' Agreement in hiring Pinkerton guards as hatch watchmen on the S.S. PRESIDENT HARDING on July 23, 1949?"

After hearings and an exchange of briefs, the Southern California Area Arbitrator rendered his decision September 14, 1949. His award and decision reads as follows:

"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 in hiring Pinkerton guards as hatch watchmen on the S.S. PRESIDENT HARDING on July 23, 1949."

At the September 23, 1949 meeting of the Clerks' Coast Labor Relations Committee, the Employers introduced the following notion:

"The Prasow award on the Hatch Watchmen issue be set aside on the grounds that it conflicst with the (Master) agreement."

The parties disagreed on this motion and, in accordance with the Master Agreement, the issue is now submitted to the Coast Arbitrator for decision.

A hearing was held on this question by the Coast Arbitrator on September 29, 1949. The Master Agreement for Clerks, Section XVI, paragraph 5, sets forth the duties and responsibilities of the Coast Arbitrator of appeal cases 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.

The Employers, at the hearing before the Coatt Arbitrator, contended that the Prasow Award conflicts with the Master Agreement in tat the award "& extends or enlarges changes or varies or amends, the Amster Agreement& " (Tr. P. 21)

The Employers' position is that Section II (a) of the Master Agreement sets forth the coverage of the agreement between the parties; that, thougth section II (b) provides that job classification may be set forth in the respetive port agreements, such job classifications must be limited in effect to include only the scope of the work incorporated in the coverage provisions of the Master Agreement; that, therefore, when the parties agreed in their Port Supplementary Agreement in provision I to a classification of Hatch Watchmen, the definition of Hatch Watchmen cannot extend beyond the work incorporated in the coverage provision of Section II (a) of the Master Agreement.

It is conceded that the Port Supplementary Agreement was arrived at in direct negotiations between the Employers involved and the Clerk's Union. These parties provided in General Provision I of the Port Supplementary Agreement for the classification of Hatch Watchmen. They had the authority by virtue of the Master Agreement, Section II (b) to so agree.

There apparently developed a dispute between the parties as to the definition of the duties of Hatch Watchmen. This matter was properly referred to the Area Arbitrator. The Area Arbitrator held hearings and considered evidence and briefs on this question and made his decision accordingly.

The Coast Arbitrator cannot agree that the Prasow Award on Hatch Watchmen violates the Ship Clerks Master Agreement. Section I of the Master Agreement provides:

"This agreement (referring to the Master Agreement) as supplemented by agreements for the various port areas covered hereby shall constitute the collective bargaining agreement between the parties hereto."

It is not clear, as the Employers argue, that Hatch Watchmen are not included in the coverage provision of the Master Agreement. At most, it can be said that there is an uncertainty as to this point. But in any case, Section II (a) of the Master Agreement must be read together with Section I of that agreement which provides that the parties may make port agreements to supplement the Mater Agreement with port agreements on those points which are only applicable to a particular port. In this case, this is exactly what the parties themselves did. The Area Arbitrator, in determining the conflict over the meaning of the term "hatch Watchmen" is not therefore necessarily limited by Section II (a) of the Master Agreement which is a general coverage provision, but may determine the meaning of this classification by the facts, conditions and practices in the particular port where the Employers and the Union, in direct negotiations, agreed to recognize this classification.

It is true that the parties could not, on a port bases, agree to void or nullify any of the Master Agreement provision, but certainly they may by supplementary agreements provide for particular port provisions to the total collective bargaining agreement which are not provided for in the Master Agreement itself. A reading of the supplemental agreement will disclose a number of subjects which are not covered directly or indirectly by the Master Agreement itself. These inclusion do not necessarily determine that a conflict exists with the Master Agreement. But on the contrary, as long as they do not void or nullify the Master Agreement, they are proper supplementation of the Master Agreement which the parties are authorized to make by Section I of the Master Agreement itself.

The Employers, at the hearing before the Coast Arbitrator (Tr. p. 29), contended that the Port Committee which executed this Los Angeles Supplementary Agreement "did not have the power to amend the agreement." The fact is that , by virtue of Section II (b) of the Master Agreement, the parties in the port areas did have the right to set up the job classifications to be covered by the agreement between them. Once having done so, any dispute arising over the meaning or interpretation of those terms becomes a proper subject for arbitration before the Area Arbitrator. The Coast Arbitrator therefore views the Prasow Award as interpreting the language which the Employers and the Union in the Southern Area themselves agreed to, and which, when a dispute arose over the meaning of such language, either party had the right to submit to the Area Arbitrator for decision.

Therefore, as to the contention that the Prasow Award violates the Master Agreement, in that it goes beyond Section II (a) of the Master Agreement, the Coast Arbitrator holds that this is not the case.

The Employers contend further that the Prasow Award is violative of the Master Agreement in that Section XVI (6) provides in part that "Arbitrator's decision must be based up on the showing of facts . . ." And the Employers contend that an award, therefore, must be based upon the preponderance of evidence submitted.

The Coast Arbitrator believes that the intent of the parties to the Master Agreement was to provide, in so far as possible, for most if not all disputes to be settled o on a local basis and that appeals to the Coast Arbitrator should be limited. This intent is indicated by the set-up of the Agreement's grievance machinery. It is indicated by the fact that the parties seeking an appeal must make a prima facie case that the decision is in violation of the Master Agreement, and is inherent in the fact that, in certain specific instances, no appeal at all is provided for.

Section XVI, paragraph 6, quoted above, could be considered mainly as a direction to Arbitrators at both the port and the coastwise level, that their decisions must be based upon the showing of facts. But if we are to concede , for purposes of discussion, that on the matter of the showing of facts, the Coastwise Arbitrator is to review area awards, it is the belief of the Coast Arbitrator, at least at this point in our mutual experience, that it was never meant that the Area Arbitrator was to review all the evidence submitted in are area case to determine whether the preponderance of evidence submitted supported the decision. There is no specific instruction with reference to appeal cases to this effect, and the intent would seem to be otherwise, for if the Coast Arbitrator was to review cases to determine whether a preponderance of evidence supported an area decision, it is likely that every area decision could and would be appealed by the losing party. This, in effect, would provide for a re-litigation of the issue heard and determined on the local area As already indicated, the Coast Arbitrator does not believe that this is the intent of the parties.

Rather, the Coast Arbitrator believes that if there is substantial evidence to support the decision, then the area decision should not in effect be reversed on appeal in so far as Section XVI, paragraph 6, is applicable to the appeal. The Coast Arbitrator may not necessarily agree with the weighing of the evidence that is introduced in a particular case, but he is not required to substitute in effect his own judgement for that of the Area Arbitrator who, after all, took the evidence and heard and saw the witnesses. Only when the Master Agreement is clearly violated in a substantive matter by the area decision can the Coast Arbitrator then himself hear and determine the issue. If the Coast Arbitrator is satisfied that substantial evidence was before the Area Arbitrator that could possibly sustain the decision of the Area Arbitrator that could possibly sustain the decision of the Area Arbitrator, then this would seem to be as far as his finding must go in so far as Section XVI, paragraph 6, provides that an arbitrator's decision must be based on the showing of fact. In the specific case of the Prasow Award, he so finds.

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

/s/ Sam Kagel, Coast Arbitrator