

American Arbitration Association
Case No. 74-300-L-01207-0702L-LYMC-C

C. ALLEN POOL, Arbitrator
Arbitrator's Case No. 5-7-08

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

UNITED STEELWORKERS)
INTERNATIONAL UNION, LOCAL 5)
Complainant)
and)
SHELL OIL PRODUCTS –US)
MARTINEZ REFINERY)
Respondent)
In Re: Grievance #SOR-11-03)
Michael French – Vacation Pay)
_____)

ARBITRATOR'S

OPINION AND AWARD

July 7, 2008

This Arbitration arose pursuant to Agreement between the UNITED STEELWORKERS INTERNATIONAL UNION, LOCAL 5, hereinafter referred to as the “UNION”, and SHELL OIL PRODUCTS-US, MARTINEZ REFINERY, hereinafter referred to as the “EMPLOYER”, under which C. ALLEN POOL was selected by the parties through procedures of the American Arbitration Association to serve as the Arbitrator. The Parties stipulated that the matter was properly before the Arbitrator and that his decision shall be final and binding.

The hearing was held in Martinez, California on May 7, 2008 at which time the parties were afforded the opportunity, of which they availed themselves, to examine and cross-examine witnesses and to introduce relevant evidence, exhibits, and argument. The witnesses were duly sworn and a written transcript was made of the hearing. Written closing arguments were timely submitted to and received by the Arbitrator on July 2, 2008 and exchanged between the parties via the Arbitrator at which time the record was closed.

Appearances:

For the Union:

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For the Employer:

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Senior Counsel
Shell Oil Company
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STIPULATED ISSUE

Whether the Employer violated the Collective Bargaining Agreement when it failed to use the Head Board Operator rate to compute the Grievant's vacation pay for August 11, 2003?

If so, what is the appropriate remedy?

STIPULATED FACTS

1. Vacation Pay is governed by Article 10 Section 5 of the contract.
2. The February 2002 Letter Agreement added the classifications of HBO and SBO.
3. Michael French was qualified as an SBO in June 2003.
4. Michael French was scheduled to work as a Board Operator on August 11, 2003.
5. Michael French was on vacation on August 11, 2003.
6. Had Michael French actually worked as a Board Operator on August 11, 2003, instead of going on vacation, he would have been paid at the HBO rate.
7. The vacation pay paid to Michael French for the time he was on vacation (August 11, 2003) was calculated on the basis of the SBO rate.
8. Upon his return from vacation, Michael French was scheduled to and did work as a Board Operator. He was paid at the HBO rate. (Joint Exhibit 5)

RELEVANT PROVISION OF THE AGREEMENT

Article 10 Section 5 – Vacation Pay

Vacation pay shall be computed on the basis of an employee's straight-time hourly rate (excluding overtime) plus applicable night shift bonus, if any, based upon an employee's forward work schedule determined as of that employee's last day worked prior to vacation (Joint Exhibit No. 1).

Exhibit A – Martinez Refinery, (Classifications and hourly rates.)

- (1) HEAD BOARD OPERATOR: 72 months in current department, qualified on at least 4 jobs, including a board job, and performing in a board operator position.
- (2) SENIOR BOARD OPERATOR: 72 months in current department, qualified on at least 4

- jobs, including a board job.
- (3) BOARD OPERATOR: 54 months in current department, qualified on at least 3 jobs, including a board job (Jt-1, p. 31; Jt-2).

BACKGROUND

Shell's Martinez refinery processes crude oil into finished products such as gasoline, jet diesel fuel, etc. To accomplish this, the refinery is organized into departments. With the exception of the Laboratory Department, all departments are focused on various processing operations, i.e. Light Oil, Operations Central, Lubricants, and Logistics. (This was the organizational structure at time of the 2002-2005 Collective Bargaining Agreement. Later, the departments were restructured to include Cracked Products, Distilling/Hydro Processing, Logistics, Utilities, Delayed Coking, and Operations Central.)

The refinery has about 700 total employees. Of these, 400 are bargaining unit members. Of the 400 BU members, 280 are Operators. The remaining 120 are maintenance employees. Prior to the 2002-2005 CBA and the Letter Agreement of February 2002 (Stipulated Fact No. 2), all operators were classed the same and were paid the same hourly rate. With the 2002-2005 CBA, negotiations led to the creation of three classifications of operators and three separate hourly wage rates. The negotiated classifications were Head Board Operator, Senior Board Operator, and Board Operator. A definition of each classification and the respective hourly wage rates were expressed in Exhibit A of the CBA, p. 31 (Jt-1, Jt-2, Jt-3 p.3).

Exhibit A defines a Board Operator as an employee who has 54 months in the current department and has qualified on at least 3 jobs, including a board job. The definition of both a Senior and Head Board Operator requires that an employee have 72 months in a department and has qualified on at least four (4) additional jobs, including a board job. Once an employee has met the qualifications expressed in the above, i.e. months in the department and

has qualified in the requisite number of additional jobs, the employee's hourly rate is set at either the Senior Board Operator's rate or the Board Operator's rate. The Senior Board Operator (SBO) position is a permanent pay classification and the employee, once qualified, is paid the hourly wage that goes with the SBO classification whether he/she works inside or outside.

As an aside, the parties, in 2006, negotiated an extension of the three pay classifications in Exhibit A. The number of months an employee is required to be in a department was changed along with the number of additional jobs necessary to be qualified. However, to be eligible for Head Board Operator pay the critical requirement remained the same. To receive the HBO rate of pay, an employee was still required to be "performing in a board position" (Jt-2 & Employer Brief p. 4).

The dispute in this matter focused on the application of the Head Board Operator hourly rate of pay. Each of the three definitions of operators required that an operator be qualified to perform a "board job". However, only Senior Board Operators in a department are eligible to receive the Head Board Operator hourly rate. In addition, a Senior Board Operator must be performing in a board operator position to receive the Head Board Operator hourly rate of pay (Jt-2).

On a typical shift, there are only so many board operator positions to be filled and those are all inside jobs. The assignment of a Senior Board Operator to an inside board job requires that the operator, working with computer modules, etc., control and direct the processing of crude oil toward the department's finished product.

Assignment to an inside board job is not a permanent assignment. It is a temporary assignment. On each shift there may be, for example, seven operators who are qualified to perform a board job. But, there may be only three board jobs that need to be filled on that shift.

That means that of the seven Senior Board Operators on that shift only three can be assigned to perform the duties in one of the board operator positions. Shift assignments are made by the Shift Team Leader, a foreman (Tr. p. 33).

How the selection is made in each shift is not material to the issue. What was material was that the Grievant was assigned, for the month of August 2003, to an inside board position. The Grievant's assignment was the result of a Work Forward Schedule drafted in late June or early July 2003 assigning the Grievant to an inside board position for the month of August 2003. As a result of the assignment, the Grievant was to be paid the Head Board Operator hourly rate.

The problem emerged after the Grievant took a one day break in his assigned schedule for August 2003. He took a paid, one day vacation leave on August 11, 2003. On his return, he resumed performing in the assigned board operator position and continued to receive the hourly rate of pay that went with the Head Board Operator classification. Soon after, the Grievant learned that the Company, for the one day vacation leave on August 11th, paid him the Senior Board Operator hourly rate of pay. The Company's contention was that on August 11th he had not actually performed in a board position and, therefore, he was only eligible to receive the Senior Board Operator hourly rate of pay. A grievance was filed and was processed to this arbitration.

POSITION OF THE UNION

The Employer violated the CBA. The Grievant's pay for the vacation day should have been calculated at the Head Board Operator (HBO) rate. He was penalized when he was paid at the lesser Senior Board Operator (SBO) rate. He was paid the HBO rate the day before he took the vacation day and he was paid the HBO rate on his return from the vacation day. Article 10 Section 5 means that you have to look at the last day worked by the employee, and his Work

Forward Schedule and apply that to the situation. This should have been done and the Grievant should have been paid at the HBO hourly rate of pay for his vacation day. The grievance should be sustained.

POSITION OF THE EMPLOYER

The Employer did not violate the CBA. Article 10 Section 5 provides the framework for determining vacation pay. The Grievant fell within the framework for receiving SBO pay for the day he was on vacation. The last clause in Article 10 Section 5 is clear. It signifies that an employee, to receive HBO pay, must actually be performing in a board operator position.

The purpose of the negotiated agreement reflected in Exhibit A was to encourage operators to learn multiple jobs so that they may become more proficient and understand the overall process. The incentive to learning additional jobs was the establishment of pay grades based on multiple competencies. Management agreed to pay more money to an operator when he actually performed the job of a board operator. The grievance should be denied.

DISCUSSION

Article 10 Section 5 of the CBA pre-dated the 2002-2005 CBA. It was negotiated in 1986, a time when all employees had the same classification and received the same hourly wage rate. The negotiated language in Exhibit A of the 2002-2005 CBA was clear and unambiguous and clearly reflected the intent and purpose of the parties. If the parties had intended that an employee be given the Head Board Operator's rate in situations other than when actually performing in a board operation position (such as while on vacation), they would have included language to express that intent.

When the Grievant was out on that vacation day, he did not perform in a board operation position. Therefore, he was not eligible to receive the Head Board Operator hourly rate of pay.

For the reasons discussed in the above, the conclusion of the Arbitrator is that the Employer did not violate the CBA. The Grievance is denied.

AWARD

The Grievance is denied. The Employer did not violate the Collective Bargaining Agreement when it failed to use the Head Board Operator rate of pay to compute the Grievant's vacation pay for August 11, 2003.

A handwritten signature in cursive script that reads "C. Allen Pool". The signature is written in black ink on a light-colored background.

C. ALLEN POOL, Arbitrator

Date: July 7, 2008