

U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)



Issue Date: 17 August 2006

CASE NO.: 2005-LHC-00876

OWCP NO.: 13-102956

In the Matter of:

W.B.,
 Claimant,

vs.

SEA-LOGIX, LLC,
 Employer,

and

SIGNAL MUTUAL INDEMNITY ASSOCIATION,
 Carrier.

Appearances: Steven M. Birnbaum, Esquire
 For the Claimant

 Frank B. Hugg, Esquire
 For the Employer

Before: Jennifer Gee
 Administrative Law Judge

DECISION AND ORDER DENYING CLAIM

INTRODUCTION

This is an action for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.*, ("Longshore Act") filed by the Claimant, for a cumulative injury that he suffered beginning on March 1, 2003, and continuing to the present, while working for Sea-Logix, LLC, ("Sea-Logix" or the "Employer") as a truck driver. It was initiated with the Office of Administrative Law Judges ("OALJ") on January 20, 2005, when it was referred to the OALJ for formal hearing by the District Director of the Office of Workers' Compensation Programs. (ALJ 1.)¹

¹ I admitted the letter of referral from the District Director as Administrative Law Judge Exhibit "ALJ" 1.

For the reasons set forth below, the claim is denied.

PROCEDURAL BACKGROUND

This case was heard and set before me in San Francisco, California, on October 7, 2005. The Claimant, his counsel, Steven M. Birnbaum, and counsel for the Sea-Logix, Frank B. Hugg all appeared and participated in the trial.

At trial, I admitted the Claimant's Exhibit ("CX") 1, the Employer's Exhibits ("EX") 1-3, 5²-7, and an ALJ Exhibit. (HT,³ pp. 7-11, 238-43.) However, I rejected EX 4. (HT, pp. 235-36.) Additionally, I judicially noticed the distance from the Port of Oakland to Sacramento. (HT, p. 236.)

ANALYSIS AND FINDINGS

Issue

The only issue in this case is whether the Claimant is an employee covered under the Longshore Act.

Stipulations

At the beginning of the hearing, the parties stipulated to the following:

1. There was an employer / employee relationship between the Claimant and Sea-Logix at the time of the Claimant's claimed injury. (HT, pp. 15-16.)
2. The claimed injuries are cumulative in nature for the period the Claimant worked for Sea-Logix. (HT, pp. 17-18.)
3. The claimed injuries are for the period from March 1, 2003, and continuing.⁴ (HT, pp. 17-18.)
4. Horizon Lines is not a party to this action. Sea-Logix is a wholly-owned subsidiary of Horizon Lines. (HT, pp. 19-20.)

I have reviewed the administrative record and find that the evidence of the record supports the stipulations. Accordingly, I approve the stipulations as stated.

² EX 5 was admitted as a sampling of the Claimant's work in the last 2 to 2½ years, and was not intended to show all of the work that he did.

³ References to "HT" are to the hearing transcript.

⁴ The Claimant's claim for Longshore Act benefits only applies to the employment period from March 1, 2003, to the date of the hearing on October 7, 2005, because the Claimant has settled other Longshore Act claims that extended through February 28, 2004, with a prior longshore employer. (HT, pp. 18-19.)

Factual Background

The Claimant has worked for Sea-Logix for approximately 13 years. (HT, p. 27.) During the last 2 to 2½ years, the Claimant has been employed as a short-haul, local, or street driver. (HT, p. 100.) In those positions, he transported containers that had been off-loaded from ships to various places in the port and to land-based customers. (HT, p. 100.) The Claimant is a member of the International Brotherhood of Teamsters, Local 70 (“Teamsters Union”). (HT, p. 91.)

The Claimant was injured on April 12, 2000, when his vehicle was rammed by a large piece of container-moving equipment that was in reverse. (HT, pp. 91-92.) After his injury, he was on and off temporary total disability for broken periods of time, but he returned to work full-time by January 2002. (HT, p. 92.)

When he returned to work following his injury, he bid on a hostler or short-haul position and was awarded the position through the collective bargaining agreement with the Teamsters Union. (HT, pp. 92-93.) The collective bargaining agreement provides for an annual selection on the bidding process. (HT, p. 177.) Since March 1, 2003, his bid position has been solely that of a short-haul or street driver. (HT, p. 100.)

A. The Business Structure of Sea-Logix

Sea-Logix is a warehouse and trucking company that provides for local pick-up and delivery of containerized cargo. (HT, p. 147.) Sea-Land Motor Freight, Sea-Logix’s predecessor-in-interest, was licensed as a common carrier by the Interstate Commerce Commission and the Federal Motor Vehicle Carrier Safety Administration. (HT, pp. 147-48; EX 3.1-3.3.) Sea-Logix is also licensed for trucking operations by the California Department of Motor Vehicles, Industry Operations Division. (HT, p. 148; EX 3.5-3.6.) Neither Sea-Logix nor its employees have ever been subject to regulation by the U.S. Coast Guard, the Federal Maritime Commission, or the Maritime Administration of the U.S. Department of Transportation. (HT, pp. 148-49.) Sea-Logix has never provided stevedoring services anywhere on the West Coast for the direct loading or unloading of cargo from a ship to the stringer by gantry crane. (HT, p. 149.) Furthermore, Sea-Logix has never been a member of the Pacific Maritime Association. (HT, p. 150.) Finally, Sea-Logix hires its warehousemen and street drivers from the Teamsters Union hiring hall. (HT, pp. 151, 154, 197, 199.)

Despite its current land-based focus, Sea-Logix employees have recovered benefits for injuries under the Longshore Act in the past. (HT, pp. 196-97.) Sea-Land, Sea-Logix’s predecessor, was previously a terminal operator that manned, operated, and ran the entire marine facility. (HT, p. 197; EX 3.4.) A “terminal operator” loads and unloads ocean vessels, and provides marine yard and gate support for loading and unloading activities. (HT, pp. 198-99.) However, Sea-Logix is no longer involved in terminal operation, and has never operated a marine terminal anywhere on the West Coast. (HT, pp. 149, 197-198.) Since Sea-Logix ceased its terminal operations 5 years ago, no Sea-Logix employee has recovered benefits for injuries under the Longshore Act in the last 2 or 3 years. (HT, p. 198.) However, Sea-Logix continues to hire employees who drive vehicles that are not licensed for driving on public streets. (HT, pp.

92-93.) Sea-Logix's terminal operation is currently performed by APM Terminals. (HT, p. 199.)

Additionally, Horizon Lines, Sea-Logix's parent organization has also distanced itself from longshore work. (HT, pp. 197-98.) Horizon Lines does not load or unload ships or provide support for doing so; it does not hire longshoremen, longshore clerks or mechanics; and it does not perform stevedoring operations in at least 48 states. (HT, pp. 197-98.)

B. The Claimant's Typical Work Day as a Street Driver

The Claimant's typical workday begins around 8:00 a.m., when the dispatcher provides him with the locations for the first run of the day. (HT, pp. 100-01.) "Dispatchers" instruct truck drivers where and how to move containers. (HT, p. 114.) The Claimant must then inspect his assigned Volvo to ensure that it is safe and suitable for driving. (HT, pp. 101-02.) Sea-Logix trucks are licensed for over-the-road use, and must be parked in the designated lot in the Sea-Logix warehouse or "container freight station" ("CFS") in "bob tail" condition, or bare and not connected to a chassis or a container. (HT, pp. 101-02.) The Claimant inspects his chassis and any container to be placed on his chassis to ensure that they are roadworthy. (HT, p. 132.) Afterwards, he hooks up the chassis of his truck via a fifth wheel, connects the air hoses and electrical lines, and checks for proper braking and lights for public highway use. (HT, p. 132.) He then secures the container to the chassis using twist locks, and raises and lowers the landing legs to either drop off or pick up a chassis. (HT, pp. 132-33.)

If the Claimant is leaving the marine yard to deliver a load, he passes through an outbound inspection lane, control gates, and security checkpoints, to allow other employees to check the roadworthiness of the vehicle and verify that the container is assigned to him. (HT, p. 133.) After he leaves the inspection area, he drives on public streets to deliver his load to a customer, rail yard, or another marine yard. (HT, p. 133.) On his return trip to the marine yard, he passes through two gates manned by inbound inspectors who inspect the containers and chasses as they arrive at the yard, and longshore clerks who tell the truck drivers where to store the incoming load or the location of the next pick-up. (HT, p. 136.)

C. The Claimant's Work in a Longshore Capacity

Sea-Logix employees who have higher seniority may be asked to perform jobs they normally are not responsible for to fulfill the eight hours of work required under the collective bargaining agreement with the Teamsters Union. (HT, pp. 53-54, 177.) Thus, although the Claimant's bid position was a "street driver," he occasionally performed non-street driver work. (HT, p. 177.) However it is rare for an employee to not perform his bid during work hours if there are eight hours of work available in his position. (HT, p. 177.) The Claimant was under the impression that he could be assigned any job in the yard that was covered in his collective bargaining agreement. (HT, p. 41.) Accordingly, he performed sporadic jobs outside of his regular responsibilities. (HT, p. 42.) During his work for the Employer, he occasionally worked as a hostler, receiver, dock man, and big lift driver. (HT, pp. 30-31.)

1. The Claimant Worked as a Dock Man

On one occasion within the last 2 to 2½ years, the Claimant was asked to help unload an over-the-road driver so that the freight could be loaded into containers. (HT, p. 33.) Unloading an over-the-road driver is classified as “dock work.” (HT, p. 33.) On that occasion, the Claimant stayed behind after the end of his shift at 5:00 p.m. to assist an over-the-road driver who arrived late. (HT, p. 33.) The Claimant only performed the dock work because it needed to be done. (HT, pp. 87-88.) The Claimant did not list the dock work on his manifest, even though it lasted 2½ hours, and the supervising foremen were unaware his work, as they had already gone home. (HT, p. 79.)

2. The Claimant Worked as a Big Lift Driver

The Claimant also drove a big lift several times within the last 2 to 2½ years, to stack and unstack containers in the “CFS,” the warehousing area where the containers are packed with freight and prepared for shipping by dockworkers. (HT, pp. 36-38, 49, 51.) A “big lift” is a heavy-duty fork lift that is capable of lifting heavy or oversized loads upwards of 20,000-30,000 pounds and is not licensed to operate on public streets or freeways. (HT, pp. 38-39, 179.) He used the big lift to move cargo from the operator’s delivering trailer onto pallets and into containers to be taken into the marine yard. (HT, pp. 50-51.) The Claimant believed that driving a big lift was part of his duties, and voluntarily performed the duties because the work needed to be done, but not because he was ordered to do it. (HT, pp. 51-52.) However, street drivers cannot volunteer to drive a big lift at anytime, because the big lift driver position is at a higher rate of pay and the work assignments must flow through the seniority process. (HT, p. 178.)

3. The Claimant Worked as a Hostler

Additionally, on a couple of occasions within the last 2 to 2½ years, the Claimant drove a “hostling tractor,” a single-man tractor used to jockey containers around. (HT, pp. 39-40.) Similar to big lifts, hostling tractors are not licensed to traverse public roadways, and are only to be operated in the maritime yard. (HT, pp. 67, 86-87.)

4. The Claimant Was Directly Loaded By the Gantry Crane

In the preceding 2 to 2½ years, the Claimant once drove a three-axle tractor onto the stringer immediately beneath the gantry crane while a ship was being loaded. (HT, p. 137.) He did so because he was asked to bring an overweight container that was too heavy for the hostling tractors to bring to the loading ship. (HT, p. 137.) The container was lifted off of the Claimant’s chassis by the overhead gantry crane. (HT, p. 138.)

Other than that sole occasion in the last 2 to 2½ years, the Claimant never pulled a container beneath the gantry crane and had the container lifted directly onto a ship by the gantry crane while ship loading or unloading operations were in progress. (HT, p. 138.) Furthermore, he has never driven beneath the gantry crane and had a container loaded upon his empty chassis to be taken to the marine yard storage rows while a ship was tied up along the stringer and while longshoremen were directly unloading and loading from a ship with the gantry crane. (HT, p.

139.) Rather, the Claimant's empty chassis would typically be loaded by a portable port packer crane operated by a longshoreman. (HT, pp. 60-61.) All direct loading and unloading of containers from a ship by the gantry crane onto a chassis was done by longshoremen, and was not done by the Claimant as a truck driver in the last 2 to 2½ years. (HT, pp. 141-42.)

5. Other Work

The Claimant also performed "minor jobs" in the yard that he did not list on his manifest. (HT, p. 78.) For instance, he helped flip a container from another steamship company's chassis in the CFS onto a Maersk / Sea-Land chassis from underneath the port packer, as a favor for a co-worker. (HT, pp. 78-79.)

6. The Claimant Performed Land Bridge Moves

The Claimant regularly performed "land bridge moves" to deliver containers from the marine yard to other contracting organizations, including steamship companies in other port areas and local railroad yards within the port area. (HT, pp. 54-56.) For the land bridge moves, the Claimant would drive onto the "stringer," the area of discharge, loading, and unloading immediately beneath the gantry crane next to the storage rows and the water's edge. (HT, pp. 57, 120-22.) Land bridge loads were often "grounded," or stacked on the ground near the stringer, within 10-15 yards or several feet of the gantry crane. (HT, pp. 58-59, 123-25.) After entering the marine yard, the Claimant would pick up a chassis and drive to the land bridge stack and underneath the port packer so that a top picker could load a packed container onto his empty tractor and chassis. (HT, pp. 59, 61-62, 229.) All of the containers moved as a part of the land bridge were cleared and released for transportation before the trucking company could move them into the storage rows. (HT, p. 167.) The Claimant then transported the containers to the storage rows in the rail yard. (HT, pp. 61-62, 123-24.) Before the land bridge operations were ultimately discontinued by Sea-Logix around 8 months before the trial, the Claimant conducted land bridge moves about once every week. (HT, pp. 61-62.)

When the Claimant participated in land bridge operations, there were no ship unloading or loading operations in the area of the stringer, and he was only moving the containers for storage in rail yard. (HT, pp. 125-26.) The unloading or loading of the vessel did not occur during the intermodal land bridge movement because of productivity and safety concerns. (HT, pp. 228-30.) During the 2 to 2½ year period in question, the Claimant never drove his truck onto the stringer and had a container directly loaded onto or taken off of the chassis that he was pulling for land bridge operations while a ship was docked. (HT, p. 123.)

No one has ever told the Claimant during the last 2 to 2½ years that he is not to do anything aside from driving his truck out to customers or picking up from customers, nor has he been punished or disciplined for performing activities outside of his regular duties. (HT, p. 80.) However, a truck driver cannot arbitrarily pick up a container at the marine yard and move it within the facility without instruction. (HT, p. 175.)

During the Claimant's entire employment with Sea-Logix, he has never been aboard an ocean-going vessel in connection with his assigned duties. (HT, p. 137.) Within the entire 2 to

2½ year period in question, the Claimant only performed the dock man, hostler driver, or big lift operator duties an estimated 5 to 7 times. (HT, p. 91.)

D. Work Within the Maritime Yard

As a street driver, the Claimant moves containers that have been released to the trucking company for movement and are being stored in the marine facility. (HT, p. 205.) He is not responsible for moving the container to storage locations within the marine facility, but for transporting containers outside of the marine facility. (HT, p. 205.) However, the Claimant does work within the maritime yard.

As a truck driver, the Claimant is responsible for removing containers off deadline chasses, by dropping the chassis and container in the “flip yard,” a designated area in the marine yard for flipping containers off of deadline chasses. (HT, pp. 71-73, 174-75.) “Deadline chasses” are damaged chasses that are unworthy and unsafe for use on the highway. (HT, pp. 71-73, 174-75.) Functioning chasses must have lights that are in working condition, fully-inflated tires, and operative twist locks. (HT, p. 174.) After dropping the deadline chassis in the flip yard, the truck driver must find and hook up to a properly working chassis and return to the location where the original container and chassis were dropped. (HT, p. 175.) Using a port packer, a longshoreman removes the container from the deadline chassis and places it onto the new, roadworthy chassis. (HT, pp. 71-73, 175.) The Claimant visits the flip yard once or twice a week for the purpose of replacing deadline chasses, as it is his responsibility as a truck driver to ensure that the equipment is safe for the open road. (HT, pp. 72-73.) After the deadline chassis has been replaced, the truck driver may transport the container to the ultimate destination. (HT, p. 175.) All of the containers that enter the flip yard are under Sea-Logix’s control and have been cleared and released for shipment. (HT, p. 175.)

The Claimant has also been asked by longshoremen to move cargo or empty containers from the marine yard to the CFS to facilitate the unloading of “deadline empty containers,” containers damaged so severely that they are inappropriate for outside customers or the open road. (HT, p. 64.) Worthy containers may go to the auto-stack loading operation in Benicia, California, but generally, the Claimant takes them to the CFS. (HT, p. 65.) He has also been asked to transport damaged containers from the maritime yard to the CFS, where the mechanics repair the container in a “patch job.” (HT, p. 77.)

The Claimant also shuttles between the marine yard and the CFS with chasses that need to be loaded with a container at the CFS or containers that must be flipped in the CFS before being transported on the open road. (HT, p. 68.) “Shuttling” is defined as transporting loaders or empty containers and chasses from the marine yard to the CFS or warehouse. (HT, pp. 110-11.) Although the CFS yard is within the same port area, to reach the adjacent CFS yard from the marine yard, truck drivers use a local public highway. (HT, pp. 66-67.)

E. When Containers Are Released to the Trucking Community

As cargo moves between the ocean and land, the formal authority to possess the container and the physical possession of the container changes hands between the longshore and trucking

community. Understanding when each community is given electronic and physical custody of the cargo is important in understanding whether a container is being loaded or unloaded from a vessel or when it is being transported to or from a landward destination.

1. **Stages of Release for Cargo Outgoing from Sea to Land**

When transporting containers from sea to land, a truck driver assumes physical custody when the container is placed on his chassis and electronic custody of the container when he exits the gate. (HT, p. 225.) First, the gantry crane operator discharges the container from the vessel onto a chassis or bomb cart. (HT, pp. 173-74, 226.) A “bomb cart” is a device that does not have precise dropping requirements, so cargo can be quickly unloaded off a vessel. (HT, p. 159.) The container is then placed on the ground or kept on the chassis, depending on the operational needs. (HT, p. 226.) Unloading concludes when all of the containers are off-loaded by longshoremen and placed in storage rows in the marine yard. (HT, pp. 155-56, 159, 231-32.)

In storage, the truck driver who has been nominated and authorized to move the container out of the marine facility is instructed to find the container in a certain row in the marine yard and to hook the container to his truck. (HT, pp. 155, 174.) The container is physically released to the trucking community when the longshoreman moves it from the storage rows onto a truck’s chassis using the top pick. (HT, p. 227.) With the container in tow, the truck driver must then complete an interchange with the marine facility at the exit gate. (HT, pp. 158, 227.) Cargo may be moving under bonded customs regulations, thus, the shipping company must authorize the trucking company to make the move and it must be cleared by customs to be moved from one location to the other. (HT, p. 166.) During the interchange, a gate clerk must inspect the container, verify that regulatory charges have been paid, electronically release the container to designated trucker in a database, and authorize the truck driver to deliver the container to the ultimate recipient. (HT, pp. 158, 166, 227.) Sea-Logix is in legal control of the container from the time it exits the gate of the marine terminal facility until the container is tendered over at the ultimate destination. (HT, pp. 214-15, 217.) Truck drivers then use public roads to traverse between the marine yard facility and the customer, railhead, or other marine facility. (HT, p. 161.)

a. Cargo Grounded for “Increased Productivity

Occasionally, longshoremen discharge containers off a vessel and stack them in the immediate ground area near the gantry crane for “increased productivity.” (HT, pp. 156, 159, 204.) Longshoremen then move the containers from the discharge area near the gantry crane to the storage rows in the marine yard, taking the load out of the way of the ship’s operation. (HT, pp. 156-57, 159, 161.) In storage, the containers are physically released as truck drivers are provided with access to them. (HT, pp. 156-57, 159, 161.) Alternatively, longshore port packers may directly load the productively-stacked containers onto trucks with empty chasses using the top pick loader. (HT, pp. 204-05.) The containers are physically released to the trucking community at the stacking. (HT, pp. 208, 228.) The load is then transported out of the marine facility by an authorized truck driver. (HT, p. 160.)

Not all of the cargo is packed into containers. In the CFS, longshoremen handle loose cargo, load oversized cargo onto ocean-going flat racks using a big lift, manage the flow of cargo with the dispatch operation outside the marine yard by organizing the containers, ensuring that ships are not overbooked, and packing the materials for shipping at the warehouse. (HT, p. 199.) Once the goods are packed into a container, the container is then taken by a Sea-Logix driver to the APM Terminals facility, with the interchange being completed at the gate house. (HT, p. 200.) Regardless of where the container was originally loaded, the trucking company, Sea-Logix, will engage in the same transaction with the marine operator, here, APM Terminals. (HT, p. 201.)

b. Cargo Outgoing from Sea to Railhead

The Joint Intermodal Terminal (“JIT”) is a central railhead facility where containers are loaded and unloaded from double-stacked train cars in the Oakland port area. (HT, pp. 182, 187.) The JIT also doubles as cargo-holding area and is about a mile away from the marine yard and half-a-mile from the water. (HT, pp. 182-83.) Trucking companies move containers from the marine yard to the JIT for ocean carrier companies. (HT, p. 118, 165.) Trucks that move the containers between the marine facility and the JIT must be licensed for use on the open road, as they traverse upon a public thoroughfare. (HT, pp. 164-65.) When truck drivers travel between the maritime area and the JIT, they travel at most, within a mile of the water. (HT, p. 186.)

The movement from sea to railhead begins when the steamship company electronically authorizes a trucking company to move a container from the marine terminal to the railhead, releasing the container in the database. (HT, p. 208.) When the truck driver arrives at the gate of the marine facility, a tower operator or clerk confirms the electronic authorization and directs the truck driver to the location of the stack for pick-up. (HT, p. 208.) Depending on the operational needs in the marine yard, the container may be on the ground or mounted on a chassis. (HT, p. 165.) A longshoreman then operates a top pick to move the container from the stack to the empty truck chassis, physically releasing the container. (HT, pp. 208-10.) Another longshoreman then inspects the chassis to ensure its roadworthiness. (HT, p. 209.) An outbound clerk validates the release and verifies that truck driver has the correct container, and then grants the truck driver permission to leave the facility to deliver the container to the railhead. (HT, p. 209.) When the truck driver arrives at the railhead, a railhead clerk must validate that the container is destined for the set location. (HT, p. 209.) Then, the driver either drops the chassis and container mounted upon it or a railhead worker picks the container off the chassis and places it on a double-stacked railcar. (HT, p. 165, 209.) The driver then returns the chassis to the terminal operator back at the marine facility. (HT, pp. 165, 209.)

2. **Stages of Release for Cargo Incoming from Railhead to Sea**

For seaward-bound loads originating from the railhead, the steamship company must first electronically authorize the trucking company to pick up the container at the railhead by notifying the railroad of the code and the location of the container through an electronic data interchange. (HT, p. 168.) The truck driver then is to pick up the container from the rail facility on Tidewater Road in Oakland, ten miles away from the port, and dray the container to the marine yard. (HT, p. 163.)

When the container arrives at the receiving marine terminal, the truck driver must complete an electronic data interchange with the terminal operator. (HT, p. 163.) “Electronic data interchange” is the gate transaction between the terminal and trucking company that electronically releases the ocean-bound container from the legal custody and control of trucking company, even though the truck driver will continue for a short distance further into the yard. (HT, pp. 169-70, 219, 222-24.) The tower clerk validates the driver’s mission, the booking number, and reservation, and the terminal representative instructs the truck driver to park in a specific row and spot in the storage yard. (HT, pp. 163-64, 168, 222.) The entire transaction is electronic, except for a paper confirmation receipt of the container from the trucking company. (HT, p. 223.)

The truck driver then drops the container in the marine row where he was instructed and thus tenders the load to the marine terminal and ocean carrier. (HT, pp. 168, 170.) At that point, the truck driver’s functionality and duties are complete, and the land movement has ended. (HT, pp. 163-64, 170, 224.) The steamship company controls the boxes that are outbound towards distant ports once Sea-Logix releases and drops the container. (HT, pp. 170-71.)

From there, the terminal operator may move the container to another location or allow the container to remain on the storage slot. (HT, p. 224.) The terminal operator coordinates, assesses, and plans for the loading of the vessel, where the container will be placed on the ship for port discharge, and for other considerations including hazardous factors and equipment size. (HT, p. 163.) A longshoreman then moves the container underneath the gantry crane to be lifted off of the chassis and aboard a vessel. (HT, p. 225.) A longshore clerk is then given a tag for a particular container, and the tag is given to a longshore yard driver who delivers the container to the gantry crane. (HT, pp. 163-64.) The longshore crane operator then pulls the container off the chassis and places it onto an ocean-going vessel. (HT, p. 164.)

3. Procedures for Cargo Moving from Terminal to Terminal

Truck drivers may be required to move a container from terminal to terminal, based on agreements between stevedoring carriers to accommodate excess containers that cannot be placed onto a ship. (HT, pp. 171-72.) This occurs if a ship did not make the intended sailing because of an erroneous overage of containers for a particular shift. (HT, pp. 171-72.) Under such agreements, the other marine terminal carrier will take control of the container at its gate, organize and plan for it, and put the container on its bus. (HT, p. 172.) Sea-Logix was nominated by Horizon Lines to take excess containers on the public highway between APM Terminals and SSA Terminals, and to tender the load to the other steamship companies. (HT, p. 172.)

Applicable Law and Discussion

To recover for work-related injuries under the Longshore Act, an employee must sustain an injury on a maritime “situs” as defined by § 903(a), and hold the “status” of a maritime employee under § 902(3). 33 U.S.C. § 903. To qualify as a maritime employee under § 2(3) of the Longshore Act, an injured employee must be a “person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-

worker including a ship repairman, shipbuilder, and ship-breaker,” and the employee must not be in one of the enumerated categories of employees excluded under the statute. 33 U.S.C. § 902(3).

A. Supreme Court on the “Status” of Truck Drivers

The Supreme Court established the test for “status” in *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977).⁵ In *Caputo*, the Court held that employees are engaged in maritime employment if they are “involved in the essential elements of unloading a vessel.” *Id.* at 267. The Court laid the groundwork for its later holding that maritime employment includes not only the denominated longshore occupations and employment involving the physical handling of cargo, but also land-based activity occurring within the § 903 situs, if it is an integral or essential part of loading or unloading a vessel. *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 45-46 (1989).

Although Congress did not define “maritime employment” in the Act, Congress did say in its Committee Reports that “employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered” under the Longshore Act. S.Rep.13; H.R.Rep 10-11, U.S. Code Cong. & Admin. News 1972, p. 4708. In interpreting this example, the Supreme Court stated that “employees such as truckdrivers [*sic*], whose responsibility on the waterfront is essentially to pick up and deliver cargo unloaded from or destined for maritime transportation are not covered.” *Caputo*, 432 U.S. at 267. However, the Court also stated that while the Committee Reports are “useful for identifying the outer bounds of who is clearly excluded and who is clearly included, it does not speak to all situations.” *Id.*

The Supreme Court spoke again about whether truck drivers satisfy the status requirement of the Longshore Act in *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69 (1979). In *Ford*, the Supreme Court defined the status test as an “occupational” determination based on the “type of duties longshoremen perform in transferring goods between ship and land transportation.” *Id.* at 82. The Court observed that “[i]n adopting an occupational test that focuses on loading and unloading, Congress anticipated that some persons who work only on land would receive benefits under the 1972 Act.” *Id.* at 80. However, the Court maintained its position of excluding truck drivers from Longshore Act coverage and reasoned on the facts before it that “There is no doubt for example, that . . . the driver of the truck carrying cotton to Galveston . . . was [not] engaged in maritime employment even though he was working on the marine situs. Such a person’s ‘responsibility is only to pick up stored cargo for further trans-shipment.’” *Id.* at 83.

B. Ninth Circuit on the “Status” of Truck Drivers

The Ninth Circuit applied the law of “status” from *Caputo* in *Dorris v. Director, OWCP*, 808 F.2d 1362 (9th Cir. 1987). There, the claimant Dorris was employed by a trucking company that transported cargo between the harbor, consignees, and the berths of different harbors. *Id.* at

⁵ In *Caputo*, the Court defined “maritime employment,” a term on which Congress had been silent when drafting the Longshore Act. The Court determined that through the 1972 Amendments to the Longshore Act, Congress had “changed what had been essentially only a ‘situs’ test of eligibility for compensation to one looking to both the ‘situs’ of the injury and the ‘status’ of the injured.” *Id.* at 264-65.

1363. Dorris' primary employment responsibilities were in land transportation and he was neither expected nor assigned to perform any longshoring work. *Id.* at 1365. The Court concluded that "a truck driver whose work involves driving a truck to the dock for receiving or removing containers, fastening the containers on the truck or chassis, and the trucking of containers between berths located in different harbors is not engaged in longshore work for the purpose of conferring jurisdiction under the Longshore Act." *Id.* at 1365. Dorris' principal responsibility on the waterfront was to pick up stored cargo for overland shipment, therefore, his work was not integral to longshoring. *Id.* The court emphasized that Dorris transported containers between different harbors and suggested that the outcome might have been different if his trucking activities had been confined to the same dock. *Id.*

Caputo and *Dorris* provide the general framework for determining the "status" of truck drivers. However, the Benefits Review Board ("BRB") and other Circuits have weighed in on the status of truck drivers under the Longshore Act, and consequently have established other fact-specific parameters that add to the general rule from *Caputo* and *Dorris*.

C. Application of the Case Law

1. The Claimant's Responsibility as a Truck Driver Was to Transport Cargo from Storage to the Ultimate Destination Outside the Port Facility

In *Martinez v. Distribution Auto Service*, 19 BRBS 12 (1985), the claimant was a truck driver for a consignee who prepared vehicles transported by ship for delivery to automobile dealers. *Id.* at 13. Similar to the facts in *Dorris*, Martinez's job duties included driving his truck to the stevedore's yard and picking up and transporting chassis to sealed containers loaded with cargo. *Id.* After the container was loaded on the chassis by longshoremen, Martinez would drive the container from the dock to the employer's yard one mile away, where it was stripped by other employees. *Id.* The BRB concluded that Martinez's work was outside of the intermediate steps of moving cargo and not integral to longshoring because his "sole responsibility was to pick up and transport a container of sealed cargo from a storage area." *Id.* at 14.

Similar to the claimants in *Dorris* and *Martinez*, although the Claimant is employed by a trucking company and not a consignee or a consumer of goods, his primary job duties also require him to drive to the stevedoring yard, pick up a chassis, allow longshoremen to load a container onto the chassis, and drive the container to the final destination where it is stripped by other employees. As *Dorris* and *Martinez* stress, these are classic duties of a truck driver. Here, the Claimant invested the bulk of his workday performing his street driver bid position duties of draying cargo over the open road with a vehicle licensed to do so. Furthermore, similar to the findings in *Dorris* and *Martinez*, the Claimant's activities of picking up cargo from storage and transporting it over the road to inland destinations are not integral to the loading and unloading of vessels in the maritime yard.

2. **The Claimant Could Not Deliver the Containers to the Final Destination Until They Were First Released or Otherwise Cleared**

In *McKenzie v. Crowley American Transport, Inc.*, 36 BRBS 41 (2002), McKenzie was responsible for transporting containers and trailers to and from the maritime yard and customs facility at the port and a railroad yard outside of the port. *Id.* at 41. McKenzie was in a class of drivers who did not board ships, load or unload cargo, or deliver containers or trailers until proper clearance and customer delivery arrangements were made. *Id.* at 42. While another class of drivers transported cargo entirely inside of the port facility, McKenzie's class transported cargo outside of the port facility. *Id.* Given his trucking responsibilities, the BRB held that McKenzie "performed the first step in the overland delivery of the goods unloaded from ships and the last step in the transportation of goods to be loaded." *Id.* at 46.

McKenzie is precisely on point here. As a street driver, and not a hostler or any other driver restricted from driving on public roads, the Claimant is in the class of employees who transports cargo outside of the port facility. The Claimant cannot deliver cargo until it has been cleared and customer delivery arrangements are finalized. (HT, p. 137.) Furthermore, he has never boarded a vessel in connection with his duties and he does not load or unload ships as a part of his assigned duties. (HT, p. 137.) As Mr. Alverson explained, containers must be handled using specific procedures that are followed by the trucking and longshoring communities. Furthermore, Sea-Logix employees may only transport containers that have been electronically released for landward shipping. For numerous legal reasons concerning ownership, customs, and safety, the Claimant may not transport containers for delivery until they have gone through proper clearance.

If the Claimant is transporting cargo from the marine yard to another land-based destination, he first must collect the container from the marine storage yards and then promptly proceed to the exit gate where the cargo is electronically released. (HT, p. 225.) The Claimant enters the marine yard for the limited purpose of picking up or dropping off the cargo and ensuring that his trucking equipment and container are roadworthy. When Sea-Logix obtains physical custody of the cargo from the ocean carrier, the cargo has already been discharged from the vessel and is either being stored in the assigned storage rows or on ground storage. For the outbound electronic release, customs are cleared, the container is inspected for roadworthiness, all outstanding regulatory charges are paid, and Sea-Logix enters electronic possession of the container. (HT, pp. 158, 166, 227, 214-15, 217.) If the Claimant is transporting cargo from a land-based destination to the marine yard, the inbound cargo is electronically released at the entrance gate and physically released when the Claimant drops it in the storage rows immediately thereafter. (HT, p. 168.)

The facts here illustrate that the Claimant is responsible for transporting cargo to land-based destinations or further trans-shipment, not loading and unloading a docked vessel. Based on the intricate and systematic series of "releases," the Claimant is prevented from handling the cargo when it is still being loaded or unloaded from the docked vessel to the storage rows or grounded storage area. As in *McKenzie*, the Claimant did not have access to the cargo for land transportation until the cargo was cleared, released, and loading and unloading operations had ceased.

3. **The Claimant's Work in the Maritime Yard was Ancillary to His Primary Truck Driving Duties**

In *Zube v. Sun Refining & Marketing Co.*, 31 BRBS 50 (1997), Zube was a tanker-truck driver employed by a refining company to transport petroleum from a storage tank located at a terminal facility to various service stations. *Id.* at 50. His duties included driving to the storage tank facility, pumping petroleum into his truck, and delivering the product to service stations. *Id.* The BRB concluded that Zube was “not engaged directly or indirectly in the loading or unloading of a vessel at the time of his injury, [his] employment duties were not intermediate steps in the movement of cargo from ship to shore, and . . . accordingly, [his] occupation does not serve a maritime purpose.” *Id.* at 51-52. To the extent that Zube was required to load or unload the product into his truck, the BRB determined it was “simply a duty ancillary to his driving the truck.” *Id.* at 53. The BRB observed that, “all longshoring operations had ceased once the product was placed into the storage containers, its point of delivery, prior to claimant’s loading it onto his truck for overland transportation.” *Id.* Zube was present on the pier for the exclusive purpose of picking up cargo for further shipment by land transportation, as opposed to performing an additional step in the unloading or loading process. *Id.* at 53-54. The BRB echoed *Caputo* and *Dorris* in holding that individuals “who are on the situs to pick-up or deliver cargo unloaded from or destined for maritime transportation, are not covered.” *Id.* at 54.

The Claimant argues that the work he does within the maritime yard, such as shuttling empty chasses and draying to the flip yard or the CFS to replace damaged chasses and containers, is sufficient to bring him within the purview of the Longshore Act. I disagree.

The Claimant’s assigned responsibilities within the maritime yard were not for the loading or unloading of vessels, but rather to ensure the roadworthiness of cargo and trucking equipment so that the equipment could ultimately be transported over-the-road. Specifically, the Claimant’s marine yard activities of replacing unworthy containers and chassis directly served his responsibility of ensuring that the equipment taken on the open road was safe for travel to its ultimate destination. Furthermore, when the Claimant shuttled empty containers to be loaded in the CFS, he was loading the containers onto the empty chasses so that Sea-Logix could deliver the cargo to the final customer. Most importantly, when the Claimant shuttled chasses to the CFS to be loaded, he traveled on a public road and left the marine facility. (HT, p. 67.) Even if he was not the truck driver who ultimately drayed the container to the ultimate land-based destination, his sole responsibility was to retrieve the container from storage so that it could ultimately be transported to an inland destination.

Given the above evidence, I find that the Claimant’s marine yard activities were “ancillary” or “incidental” to his overall truck driving responsibilities of transporting containers between the land and ocean and that his responsibilities on the waterfront were limited to essentially picking up and delivering cargo unloaded from or destined for maritime shipment. Similar to *Zube*, the activities that the Claimant performed within the maritime area, such as shuttling empty chasses to be loaded in the CFS and helping to flip damaged containers and chasses off the tractor trucks were incidental to his primary responsibility of draying cargo over the open road and were not additional steps in the process of loading and unloading ships.

D. Distinguishable Lower Court Cases

In *Boudlouche v. Howard Trucking Co., Inc.*, 632 F.2d 1346 (5th Cir. 1980), Boudlouche was employed by a trucking company where roughly half of his trucking runs were between land-based sites, and the other half were equipment pick-ups or deliveries at the docks. *Id.* at 1347. For the equipment runs at the docks, Boudlouche was expected to assist in loading and unloading, and at poorly-equipped docks, he often loaded and unloaded the equipment by himself. *Id.* at 1348. However, only a minor fraction—2.5 to 5%—of his overall work time was spent loading and unloading cargo at dock facilities. *Id.* at 1347. The court held that although Boudlouche’s primary employment duties were as a truck driver, because Boudlouche was expressly and regularly directed by his employer to perform longshoring work, he satisfied the “status” requirement of Longshore Act. *Id.* at 1348. *Boudlouche* echoed language in *Caputo* in holding that a claimant satisfies the “status” requirement if some portion of his activities constitutes “indisputably longshoring work.” *Id.* However, those activities must be more than episodic, momentary, or incidental to maritime work. *Id.*

In *Waugh v. Matt’s Enterprises, Inc.*, 33 BRBS 9 (1999), a follow-up case to *Boudlouche*, Waugh was a driver for a trucking company that hauled scrap metal to steel companies or a storage field from a nearby dock. *Id.* at 10. Scrap metal was unloaded from barges by a magnetic crane and loaded into the trucks. *Id.* To prevent against flat tires, Waugh often cleared the area surrounding his truck from stray pieces of scrap metal that had fallen from the magnetic crane and routinely boarded the barges to assist in unloading at the request of other employees. *Id.* Waugh regularly performed maritime tasks—such as moving the barges and maneuvering the magnetic crane—without adverse ramifications from his supervisors. *Id.* at 10, 12. Waugh was never disciplined for performing the additional tasks, though his activities were completed with employer knowledge or even at the request of his supervisor and the operating manager. *Id.* The BRB held that Waugh held the “status” of a longshoreman because he regularly assisted in unloading the barges with tacit employer approval, the scrap field constituted an “intermediary storage site,” and his transportation of the metal from the docks to the scrap field was “an intermediate step in the process of moving cargo between ship and land transportation.” *Id.* at 12.

Under *Boudlouche* and *Waugh*, if a truck driver employee performs indisputably longshoring work either: 1) at the employer’s express direction or 2) with the employer’s knowledge and he is not disciplined by the employer for doing so, then the truck driver will be deemed to have the requisite “status” to bring a claim under the Longshore Act. However, the claimant is not covered by the Longshore Act if he merely performs work that is episodic, momentary, or incidental to non-maritime work or if he participates in an intermediate step of moving cargo between the vessel and land transportation.

1. Sea-Logix Did Not Specifically Direct the Claimant to Engage In Maritime Activities

The Claimant’s work responsibilities are distinguishable from the responsibilities of claimant in *Boudlouche*. Here, the Claimant was never directed or authorized by Sea-Logix to engage in loading or unloading activities as a part of his regular employment responsibilities. The Claimant only performed longshore work on a handful of occasions and he admitted to

doing such work voluntarily, after hours, and without supervisor knowledge. On the several times that the Claimant drove a big lift, he did so not because he was ordered to, but because “the work needed to be done.” (HT, p. 51.) On the one occasion the Claimant worked as a dock man, he did so after hours and again, because the work needed to be done. (HT, pp. 87-88.) Additionally, he flipped a container onto a chassis inside of the CFS as a “favor” for his “fellow worker.” (HT, pp. 78-79.) He produced no evidence that he was ever directly ordered by a Sea-Logix supervisor to perform any of the longshore tasks.

Although the Claimant claimed that he sometimes had to work outside of his bid responsibilities to satisfy his daily hours requirement under the collective bargaining agreement, Mr. Alverson revealed that employees could not unilaterally and voluntarily perform longshore work, as seniority restrictions, basic practices on the job site, and the division of responsibilities prevented them from doing so. Before engaging in other types of work, the Claimant was to first to finish all duties as a truck driver. Most importantly, by the Claimant’s own admission, he performed longshoring activities without being specifically directed, and voluntarily did so based on his own “understanding” that it was part of his duties.

Thus, the facts here are distinguishable from *Boudlouche*. In *Boudlouche*, the employer specifically directed Boudlouche to engage in maritime work that took up half of his overall responsibilities. In contrast, the Claimant here gratuitously and irregularly engaged in maritime duties, without the express consent or authority of Sea-Logix. Therefore, I find that Sea-Logix did not expressly direct the Claimant to perform longshoring activities.

2. Sea-Logix Did Not Implicitly Authorize the Claimant to Engage In Longshoring Activities Because There Is No Evidence Sea-Logix Was Aware of the Claimant’s Maritime Activities

Unlike the situation in *Waugh*, the Claimant produced no evidence that Sea-Logix was aware of his longshoring activities. Although Mr. Alverson acknowledged that the Claimant would offer to help other maritime workers, there was no evidence that he or any other Sea-Logix supervisor knew of the Claimant’s specific longshoring activities. Mr. Alverson expressed surprise at trial when he learned about the Claimant’s maritime work of moving a heavy load directly from the gantry crane. (HT, pp. 145-46, 176-77.) In his history with Sea-Logix, Mr. Alverson was unable to recall any instance where a Teamster driver drove directly underneath the gantry crane and had a container removed from a chassis and loaded onto a boarded vessel. (HT, pp. 145-46, 176-77.) Furthermore, it was not possible for him or any other Sea-Logix supervisors to know of the one time when the Claimant performed dock work because the Claimant did not list it on his manifest and performed the work after hours, when all the supervising foremen had left for the day. (HT, p. 79.) Finally, although Mr. Alverson testified that it was “possible” that the Claimant could have engaged in the longshoring activities alleged, Claimant did not prove that Sea-Logix or supervisors, such as Mr. Alverson, knew of the Claimant’s longshoring activities.

The Claimant’s longshore work was also infrequent and sporadic. The Claimant only performed longshore work an estimated total of 5 to 7 occasions in the 2 to 2½ year period, making it less likely that a Sea-Logix supervisor could personally observe the Claimant or otherwise learn of his maritime activities. (HT, p. 91.) Mr. Alverson estimated that all of the

longshore work that the Claimant performed in the 2 to 2½ year period in question only comprised 1/10 of 1% of all of his overall work with Sea-Logix. (HT, p. 179.) In contrast, the claimant in *Waugh* routinely performed longshoring activities, and even regularly boarded docked ocean vessels. The Claimant has never been aboard a vessel during work with Sea-Logix for the past 2 to 2½ years. (HT, p. 137.)

The Claimant professed to have specifically withheld information about the times when he performed longshore work on his manifest worksheet. The Claimant himself acknowledged that some of his longshore activities were so “minor” that he did not bother to list them on his manifest. (HT, p. 78.) His intentional omission of some of his longshore activities from the written record further reduces the likelihood that a Sea-Logix supervisor was aware of the Claimant’s longshoring activities.

Thus, on the several times the Claimant helped in loading and unloading activities, he provided no evidence that he did so with his employer’s knowledge. Under *Waugh*, an employer’s failure to reprimand a truck driving employee for performing longshore activities is an implicit authorization or permission only if the employer was aware that the claimant engaged in maritime activities. Here, Sea-Logix could not have directly or implicitly authorized the Claimant to perform longshore work since there was no evidence Sea-Logix was aware of any of his longshoring activities.

3. The Claimant’s Longshoring Activities Were Momentary, Episodic, Or Incidental to Non-Maritime Work

In *Boudlouche*, the BRB reiterated the legal standard in *Caputo*, that a truck driver possesses the necessary longshore “status” if some portion of his employment activities constitute “indisputably longshoring work,” but those activities cannot be merely episodic, momentary, or incidental to maritime work. *Boudlouche*, 632 F.2d at 1348. Applying this standard, I find that the sporadic instances of longshore work that the Claimant performed are only episodic and momentary, and therefore insufficient to bring him under the protection of the Longshore Act.

The Claimant admitted to only having performed “indisputably longshoring” activities a limited number of times within the last 2 to 2½ years. In his descriptions of his maritime work, he repeatedly limited or qualified the frequency of his longshore work. He drove a hostler “[m]aybe on a couple of occasions.” (HT, p. 40.) He operated a big lift “several times.” (HT, p. 38.) He performed dock work “only on one occasion.” (HT, p. 36.) Finally, he was directly unloaded from a gantry crane only “one time.” (HT, p. 137.) Mr. Alverson estimated that of all the hours worked that the Claimant worked for Sea-Logix, the Claimant’s claimed longshoring activities were a trivial part of his overall workload. As mentioned earlier, he specifically estimated that of the 2,000 hours worked per year, the Claimant’s longshore activities only constituted only 0.1% (or specifically, 1/10 of 1%) of his overall workload. (HT, pp. 178-79.) Although the *Boudlouche* court held that assigned longshore work that equaled 2.5% to 5% of Boudlouche’s overall workload was sufficient to qualify under the Longshore Act, the Claimant’s voluntary longshore work of 0.1% is significantly more negligible. Numerically calculating the figures, for the last 2½ years, the Claimant worked a total of 5,000 hours. At

0.1%, the Claimant performed an estimated 5 hours of longshore work. If the claimant in *Boudlouche* also worked 5,000 hours, he would have performed 125 to 250 hours of longshore work. In light of these figures, it is fair to say that the Claimant's longshoring activities were momentary and episodic.

Thus, I find that although the Claimant performed "some" work that was longshore in nature, this work was not a regular or understood job responsibility, but rather momentary and episodic work that the Claimant voluntarily undertook without the knowledge of his supervisors.

4. The Claimant's Participation in Land Bridge Moves Was Not Maritime Employment

The Claimant attempts to classify his work performing land bridge moves as longshore work. Using the analysis in *Waugh v. Matt's Enterprises, Inc.*, 33 BRBS 9 (1999), *Warren Bros. v. Nelson*, 635 F.2d 552 (6th Cir. 1980), and *Uresti v. Port Container Industries, Inc.* 33 BRBS 215 (2000), I find no support for this argument.

Warren Bros. involved a truck driver who was responsible for driving his truck underneath a gravel hopper to collect falling gravel being dropped by cranes that retrieved the gravel from the barges. *Id.* at 553. Although truck drivers like Nelson were not to leave the truck cabs or assist in loading the trucks, the Sixth Circuit held that he was inherently involved in the overall process of unloading cargo from ship to storage, albeit from a truck cab "rather than from behind a wheelbarrow or dolly[.]" *Id.* at 553, 555-556. The Court held that Nelson's transporting of the cargo from the barge to an outside storage area was "an integral part of the 'overall process' of unloading the barges" and not just the further trans-shipment of cargo because "[t]he dumping of gravel from the barges into the hopper did not complete the unloading process[.]" but the unloading process continued until the gravel was delivered to the manufacturer. *Id.* at 555.

When the Claimant performed land bridge moves, he did so at Sea-Logix's direction. Furthermore, in the moves, he transported containers to rail yard storage within the port and to steamship companies in other ports. The land bridge moves were a regular part of his duties before they were discontinued. Thus, if these land bridge moves constitute "indisputably longshoring work," the Claimant will be entitled to recover under the Longshore Act. However, I find that the land bridge moves do not constitute longshoring activities.

For land bridge moves, the vessel must be fully discharged and the containers must be grounded as storage before the Claimant can access the offloaded cargo. Thus, when the Claimant comes into physical custody of the containers for the land bridge move, all longshoring operations have ceased and the land-bound transportation process is ready to begin. (HT, pp. 167-68, 208.) When the Claimant physically collects a container from the maritime yard and begins to transport it to the railhead, he begins the first step of the landward transportation. When the Claimant leaves the marine facility to make the land bridge delivery, he must go through the exit gate and be electronically authorized to transport the container outside of the marine facility. (HT, p. 209.) Furthermore, trucks that travel to the JIT railhead for land bridge moves are required to be licensed for use on the open road, as truck drivers use the public thoroughfare to commute between the marine facility and the rail head. (HT, pp. 164-65.)

Warren Bros. is distinguishable because the claimant there is loaded by a crane that directly moves gravel from the docked vessel to the truck. Here, the equivalent of this crane is the gantry crane. Other than the single, isolated occurrence where the Claimant was directly unloaded by an overhead gantry crane, the Claimant has never directly received or directly provided any cargo to the gantry crane. As a part of the division of responsibilities between the longshoremen and the truck drivers, the Claimant is strictly prevented from direct interaction with the gantry crane. All of the cargo is already in intermediate storage when the Claimant is provided access to it for land bridge movement.

The Claimant's close proximity to the gantry crane and the water's edge during land bridge moves is irrelevant for determining whether the Claimant performs loading and unloading longshore work. The inquiry of "status" is narrowly focused on the physical activities and duties. *Ford*, 444 U.S. at 80. Situs alone cannot confer jurisdiction under the Longshore Act.

Therefore, I find that when the Claimant participated in land bridge moves, the containers were in storage and already in the land-based stream of transportation. When he moved the containers to the rail lines, he was not engaged in maritime activities, but rather land transportation.

5. The Claimant's Trucking Route Was Not Confined to the Boundaries of the Port

Longshoremen do not perform drayage on the open road. (HT, pp. 69, 154.) Instead, longshoremen load or unload cargo from vessels to the shore area beneath the gantry crane, operate the gantry crane to move containers to and from the chasses and vessels, drive empty chasses underneath the gantry crane hook to be loaded, and transport cargo to maritime storage. (HT, pp. 69, 156-57, 202-04.) In contrast, street drivers move stored containers from a marine yard facility to a customer, another marine terminal, or a rail head across a public highway. (HT, pp. 152-53.)

In *Uresti v. Port Container Industries, Inc.* 33 BRBS 215 (2000), the BRB answered the open question presented by *Dorris* regarding the status of a truck driver who transports cargo entirely within a fixed waterfront area. *Uresti* was responsible for: 1) driving to the dock where longshoremen would load his truck with materials from the vessel, 2) transporting the load to a warehouse or yard, 3) guiding the crane operator in loading his truck, 4) securing the load to his truck trailer, and 5) transporting the materials to the warehouse or storage yard within the port. *Id.* at 215. Although he occasionally boarded the ship to aid the longshoremen, his supervisors were unaware of these activities because he was not assigned these duties and such duties were not expected of him. *Id.* at 218. The BRB identified one overriding factor in *Uresti*: his trucking route was entirely within the boundaries of the port facility. *Id.* at 219. He never drove outside the port and his regular duties did not involve delivering cargo to the consignee's place of business. *Id.* Thus, the BRB determined that he was engaged in an intermediate step in the unloading process, and he satisfied the Longshore Act status requirement. *Id.* at 220; *see also Triguero v. Consolidated Rail Corp.*, 932 F.2d at 100 (finding that the claimant driver of a yard-hustler qualified as a maritime employee despite having traveled stretches of public road,

because the hustler was not a registered vehicle for such travel, but was to be used within the port and was merely “permitted to travel those portions of public road necessary to reach Portside.”)

The Claimant argues that he falls within the jurisdiction of the Longshore Act because he often performed duties within the port. I disagree. Unlike the facts in *Uresti* or the open hypothetical proposed in *Dorris*, the Claimant transported containers outside of the port and traveled on public streets to deliver containers to land-based destinations. While the trucking route in *Uresti* was entirely within the port area, the Claimant’s express job responsibilities required him to exit the port to make deliveries to inland locations, and he drove a vehicle licensed for use on the open road to do so. In one of the Claimant’s trucking runs, he made deliveries to several landlocked locations in the course of a day, including destinations such as Sacramento, Stockton, and Lockeford. (HT, pp. 180-81.) Although the Claimant also transported cargo to locations within the port area for land bridge moves, his overall employment situation is not analogous to the employment situation in *Uresti* because he regularly traveled outside of the port area to fulfill his basic job responsibilities, and unlike *Uresti*, he did not work exclusively in the maritime port. Therefore, I find that the Claimant does not have longshore “status” by virtue of his work within the maritime port.

E. The Cases Cannot Be Distinguished

In the Claimant’s Post Trial Brief (“CPTB”), he attempts to distinguish *Dorris v. Director, OWCP*, 808 F.2d 1362 (9th Cir. 1987); *Martinez v. Distribution Auto Service*, 19 BRBS 12 (1985); and *McKenzie v. Crowley American Transport, Inc.*, 36 BRBS 41 (2002) from the facts here.⁶ However, as discussed above, his arguments do not have merit.

The Claimant first alleges that *Dorris* is inapplicable because unlike the claimant in *Dorris*, he drays cargo within the harbor in the Port of Oakland. Additionally, he argues that “[t]he claimant’s testimony in *Dorris* was disputed,” Sea-Logix employs “teamsters as ‘hostlers[,]’” and Sea-Logix holds itself out as a transportation service for inter-harbor drayage within the Port of Oakland, whereas the employer in *Dorris* was merely a transportation company. (CPTB, pp. 7-8.)

As discussed above, even though the Claimant works within the port area, the majority of his duties require him to travel significant distances outside of the port to inland destinations. Furthermore, whether the case evidence is undisputed makes no factual difference, for the Claimant bears the ultimate burden of proving his case. Finally, the Claimant himself argues that the formal classification of Sea-Logix’s business is not a determinative factor, rather, one must scrutinize the employee’s specific duties and determine whether those duties are maritime in nature. Accordingly, the Claimant cannot reap the benefit from the same faulty argument that he simultaneously attempts to discount. In any event, the facts here are not distinguishable from *Dorris*.

⁶ Other than his arguments contrasting these cases from his facts, he cites only *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249 (1977) to support his case and ignores other relevant case law.

Second, the Claimant also attempts to distinguish *Martinez* on the grounds that the claimant in *Martinez* was employed by a consignee, and thus its business was centered around the consumption of goods, not the maritime shipment goods. (CPTB, p. 9.) Furthermore, *Martinez* never transported cargo within the marine yard before the process of inland transportation. (CPTB, p. 9.)

Again, although the structure of the employer's business is relevant, one must look primarily at the employee's job responsibilities. In *Martinez*, even though court considered that the employer there was a consignee, it primarily focused on the claimant's specific job duties in reaching its ultimate finding. Sea-Logix is not involved in maritime loading and unloading, but primarily focuses on landward transportation, and its numerous federal and state licenses and the formal business structure reveals this focus. Furthermore, when the Claimant here transported cargo within the maritime yard, he traveled on public roads and could only access cargo that was released by the longshoremen. Thus, *Martinez* is not distinguishable from the facts here, because Sea-Logix is a transportation company—and not a longshoring entity—and the Claimant transports cargo to land-based destinations.

Finally, the Claimant tries to distinguish *McKenzie* on the grounds that the claimant there did not move cargo to an intermediate storage area in the port, rather, the cargo was loaded on the truck for overland transportation. He also argues that unlike *McKenzie*, he was covered by a collective bargaining agreement under which he “understood” that he could perform longshore work. Additionally, the Claimant regularly transported cargo between the berths of the same harbor waterfront, shuttled containers, and performed land bridge moves, and there were different and ambiguous accounts as to when exactly release occurred.

As discussed earlier, here, the Claimant did not move cargo to an intermediate storage area. Furthermore, the Claimant presented no convincing evidence that his collective bargaining agreement required or permitted him to perform longshoring activities other than his “understanding.” Even if he were permitted to perform longshore work under the agreement, Mr. Alverson revealed that Sea-Logix employees were not to unilaterally perform longshoring work without supervisors' orders and because of seniority restrictions. Additionally, although the Claimant performed activities within the harbor and drove to railhead storage locations, those activities are still classified as land-based transportation. Lastly, Mr. Alverson's overall testimony clearly defines when cargo is both physically and electronically released. Given these reasons, *McKenzie* is also not distinguishable from the facts here.

Accordingly, I find the Claimant's attempts to distinguish *Dorris*, *Martinez*, and *McKenzie* unavailing because he failed to identify legally significant facts in each of those cases that differ from the facts here.

F. Union Membership and Other Non-Occupational Factors

Union affiliation is another factor that may be considered in determining status, but it is not determinative. *Triguero v. Consolidated Rail Corp.*, 932 F.2d 95, 100 (2d Cir. 1991) (remarking that although not dispositive, one factor the court considered in determining status was claimant's membership in a longshoremen's union).

In *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69 (1979), the Supreme Court considered the consolidated cases of two claimants who were prevented from moving cargo directly onto or from a vessel to a shoreside point of rest—duties which were specially reserved for longshoremen under agreements between the longshore union and their unions, the warehousemen’s and cotton header’s unions. *Id.* at 71-72. The Court held that despite the union restrictions, both men were covered under the Longshore Act because their employment duties were those generally performed by longshoremen in transferring goods between ship and land transportation. *Id.* at 81-83. Their physical handling of the cargo before and after entering the land-based stream of commerce was a critical part of the loading and unloading process. *Id.* The Court remarked that absent the union contracts, their duties would have been performed by longshoremen. *Id.* Because union constituencies are often based on political categories or other arbitrary factors, it is not a “decisive factor” in determining maritime status. The Court remarked, “We do not suggest that the scope of maritime employment depends upon the vagaries of union jurisdiction.” *Id.* at 82; *see also Caputo*, 432 U.S. 249, 268 fn. 30 (noting, “We find consideration of the [statutory] purposes more enlightening than looking simply at whether respondents belong to the International Longshoremen’s Association. . . . We cannot assume that Congress intended to make union membership the decisive factor. The vagaries of union jurisdiction are unrelated to the purposes of the Act.”)

Here, the Claimant is a member of the Teamsters Union. Therefore, his union membership is an additional factor—although not a determinative one—that weighs against a finding of longshore “status.”

In addition to the Claimant’s membership with the Teamsters Union, there are other non-occupational factors that help determine “status” here. Sea-Logix bills itself as a “warehouse, trucking, and drayage company,” and is registered with various governmental agencies as a company involved in land-based transportation. Although their self-created and self-defined business structure is also not dispositive of whether its hired employees qualify under the Longshore Act as “longshoremen,” the formal characterization of Sea-Logix’s business structure is germane when determining “status.”

Considering all of the non-occupational evidence in its totality, including Sea-Logix’s state and federal transportation licenses and its exclusive hiring of members of the Teamsters’ Union, I find that cumulatively, these factors also weigh in favor of finding the Claimant to be a non-maritime employee.

Summary

In review, I find that the Claimant does not possess the requisite “status” to fall under the jurisdiction of the Longshore Act. The Claimant’s primary employment responsibility was to transport cargo to and from maritime locations and land-based destinations. He could not deliver or transport cargo that had not been released or cleared by the longshoremen. His other work within the maritime yard was ancillary to his primary duties as a truck driver. Sea-Logix did not specifically direct or implicitly authorize the Claimant to perform any maritime activities. The Claimant’s maritime activities were only momentary, episodic, or incidental to non-maritime work. Even when the Claimant performed land bridge moves, he was not engaged in maritime

employment because he never moved cargo to an intermediate storage area or performed intermediate stages of longshoring work. The Claimant's trucking route extended outside the boundaries of the port. Finally, both the Claimant and Sea-Logix were affiliated with non-longshore unions and Sea-Logix was licensed as a transportation company, not a longshoring company.

CONCLUSION

The Claimant is not an employee covered by the Longshore Act. It is ordered that this claim be DENIED.

ORDER

The Claimant's claim is DENIED.

A

JENNIFER GEE
Administrative Law Judge