

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the arbitration of a dispute between:	)	
	)	CASE NO. 2171-A-79-184
INLANDBOATMEN'S UNION OF THE PACIFIC	)	DECISION NO. 879-MRNE
and	)	
WASHINGTON STATE FERRIES.	)	ARBITRATION AWARD

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Robert Burroughs, Regional Director, Puget Sound  
Region, Inlandboatmen's Union, appeared on behalf  
of the union.

Slade Gorton, Washington State Attorney General,  
by Robert McIntosh, Assistant Attorney General,  
appeared on behalf of the employer.

The Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration with the Public Employment Relations Commission (PERC) pursuant to RCW 47.64.030 on July 16, 1979. A hearing was held before Hearing Officer Katrina I. Boedecker September 25, 1979. Both parties were invited to submit written arguments at the close of the hearing. Washington State Ferries filed a brief on October 29, 1979.

FACTS:

The Washington State Ferry System sells tickets to the public in two different locations at Pier 52, the Seattle Ferry Terminal. Passengers on foot buy tickets upstairs, inside the ferry terminal building. Passengers in vehicles purchase tickets outside the terminal in what is called a "downstairs location." Foot passengers board the ferries on a higher deck than do the automobile passengers.

The IBU and the employer had a contract effective from April 1, 1977 through March 31, 1980 covering, among others, employee classifications of "auto seller" and "passenger seller". During the summer of 1979 passenger ticket sellers "upstairs" received \$9.62 per hour; auto ticket sellers "downstairs" received \$9.78 per hour. At the start of the 1979 summer schedule, Washington State Ferries initiated a reservation program for vehicles using the Anacortes-Sidney route. To better utilize the limited capacity of the ferries on that run, part of each day's space on that ferry was reserved for sale at the Seattle ferry terminal to patrons who would find it convenient to buy their tickets in Seattle rather than going up to Anacortes. Twenty spaces a day were reserved for sale through

the Pier 52 "upstairs" passenger ticket location. This practice continued until September 21, 1979, when the summer ferry schedule ended and the sale of auto tickets for the Anacortes-Sidney ferry at the Seattle Ferry Terminal ceased.

Passenger ticket sellers are usually responsible for 14 different types of tickets. With the addition of the Anacortes-Sidney tickets, they were responsible for 3 more categories: car and driver, senior citizen car and driver, and a miscellaneous ticket used for trailers, campers and buses. The tickets cost \$20.35 for the car and driver ticket; \$18.40 for the car and driver senior citizen ticket; and \$8.50 to \$31.65 for the miscellaneous ticket. Usually a ticket stock would include 6 to 8 rolls of each type of ticket to be issued with 500 single one-way tickets to a roll. For the Anacortes-Sidney runs the passenger ticket sellers were issued 1 roll each of the auto tickets with 500 tickets to a roll and 1 pad of the miscellaneous tickets with 100 tickets in the pad. One passenger ticket seller testified that most of the sellers did not use a whole roll during the time they were responsible for these tickets.

ISSUE:

At the hearing, the parties stipulated that the issue to be decided is:

"Whether passenger ticket sellers at Pier 52 should be compensated at the auto seller rate?"

PERTINENT CONTRACT PROVISIONS:

Rule 15 - Disputes

. . .

"15.02 In the event of a controversy or dispute arising either out of the interpretation of this Agreement or because an employee considers himself unjustly treated, a conference shall be arranged immediately between the parties, each to appoint one representative with full authority to settle such controversy or dispute.

15.03 In the event the representatives fail to agree within three (3) days, it shall be their duty to refer such controversy or dispute to the Public Employment Relations Commission, established under Chapter R.C.W. 47.64. The orders and awards of the Public Employment Relations Commission shall be binding upon any employee, or employees, or their representatives thereby, and upon the Employer."

## Rule 32 - Ticket Sellers and Ticket Takers

"32.01 Each employee shall be assigned for payroll purposes to one of the classifications listed in Rule 17 and shall be paid at the specified rate for such classification for work performed therein and for paid time off to which they are entitled under the provisions of this Agreement. ...

\* \* \*

32.05 Auto Ticket Sellers or Auto Ticket Takers having completed fifteen (15) years of continuous service with Washington State Ferries shall be allowed to receive the auto deck rate of pay when filling job vacancies on the passenger deck, provided the Seller or Taker's health will not permit the person to remain employed on the auto deck."

\* \* \*

POSITIONS OF THE PARTIES:

The IBU argues that when the upstairs passenger ticket sellers were issued auto, over-sized vehicle, bus, trailer, and truck tickets for the Anacortes-Sidney route as well as auto commute books for the cross-sound routes, those sellers should have been compensated at the auto seller rate. The union justifies its position on the basis of Rule 32.05. The union argues that when passenger ticket sellers are issued auto ticket stock they should be paid at the auto seller rate since the extra tickets are above their normal stock and are an added responsibility worth approximately \$30,000.

Washington State Ferries argues that the language of the labor contract indicates that the distinction between "auto sellers" and "passenger sellers" is based on the location of their work rather than the types of tickets which are sold. The employer argues that Rule 32.05 contemplates the auto seller rate of pay is to be regarded as pay for work on the auto deck. Additionally, the employer argues that the historical interpretation of the contract by the parties and the obvious differences between the two jobs provides a basis for the difference in the rates of pay.

DISCUSSION:

The pivotal question in this discussion is why was the pay differential put in the contract? Was the 16 cents per hour premium pay negotiated to compensate for hazardous working conditions or to compensate for different ticket inventory responsibilities?

The union offers evidence that the additional Anacortes-Sidney auto tickets were valued about \$30,000. As such, the selling of these tickets

increased the upstairs ticket sellers responsibilities and liability. The union argues that the additional tickets increased the bookkeeping responsibility of passenger ticket sellers. However, testimony showed passenger ticket sellers have one hour allocated for bookkeeping prior to going off shift. Even with the addition of three new forms that the sellers had to fill out involving the Anacortes-Sidney route, there was no testimony to show that there needed to be increased bookkeeping time. One passenger ticket seller testified he would sell tickets for 7 hours and then spend the final hour preparing a daily report. This report involves listing the number of tickets of each type sold that day, calculating the totals, multiplying the total by the price, and determining the total gross. He would then count his working fund money to determine the selling balances for the day, and finally turn in the forms and any cash or checks at the ticket agent's office. This witness testified that even with the addition of the Anacortes-Sidney tickets, he could get all the bookkeeping calculations done in the one hour normally allotted. The employer offered unrefuted testimony that the increased responsibility of the Anacortes-Sidney tickets totaled selling 2.7 tickets per seller per day.

The deputy general manager of the Washington State Ferries, Ralph White, testified that the pay differential between the two types of sellers had "always referred to the location where the workers performed." The record substantiates that the downstairs auto ticket sellers are exposed to more onerous conditions than the upstairs passenger ticket sellers. The downstairs ticket sellers are exposed to the year-round weather conditions while selling tickets from open booths. These sellers must wear protective clothing to keep warm in the winter and dry year-round. They are constantly exposed to fumes from automobile exhaust. Upstairs passenger ticket sellers may remain seated in a heated enclosed area. Downstairs auto ticket sellers must stand to transact business with passengers in vehicles. Additionally, the downstairs sellers are in smaller quarters and have less room to work and keep records of their ticket selling activities than their upstairs counterparts. Although the IBU argues that selling the Anacortes-Sidney reservations tickets slowed down the selling process in the upstairs location, thereby making normal foot passengers upset and hurried as they tried to buy their tickets to walk onto the ferry, it is clear that a higher premium on speed is placed on the auto ticket sellers who must sell to an entire line of cars which must all be loaded onto the ferry before the sailing time.

Rule 32.05 of the collective bargaining agreement specifically recognizes a ticket seller's health may not permit that person to remain employed on the auto deck; if the seller's health is not good enough to enable

the person to sell downstairs, then that seller is transferred upstairs. Thus the parties to the agreement impliedly recognized that more onerous conditions existed in the downstairs selling area. Passenger ticket seller Thomas Meagher testified that he used to sell tickets downstairs and had since transferred to the upstairs location. He testified that he changed locations essentially to get better hours, but "I might have moved up to get away from the smog."

The employer presented evidence that the upstairs passenger ticket sellers had been responsible for selling auto tickets in previous years. At one time the Washington State Ferries sold a ten-day ten-ride book of tickets. In 1975 it removed the expiration date from these ten-ride commuter books. Since they could then be used at any time, they were sold upstairs through the passenger ticket seller window even though they were vehicle tickets and called auto-commute books. There is no evidence to show that when upstairs passenger ticket sellers had to sell auto-commute books in prior years these sellers received the higher auto seller rate. Neither is there any evidence that the IBU protested this payment procedure.

Arbitrators have previously held where premium pay was negotiated for onerous conditions, the union has the burden of showing the threshold hazardous or onerous condition exists before the premium pay may be successfully claimed. Naval Air Rework Facility 73 LA 201 (1979). National Electrical Contractors Association 63 LA 235 (1974). The evidence in the instant case shows that the 16 cents premium per hour was negotiated to compensate for the onerous conditions of having to sell tickets in the downstairs outside location and not to pay the seller for the type of ticket for which he or she was responsible. Even though the upstairs passenger ticket sellers had increased responsibility due to the addition of the Anacortes-Sidney run ticket, we find the increase was de minimus and not enough to warrant a premium pay.

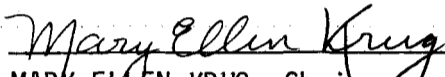
AWARD

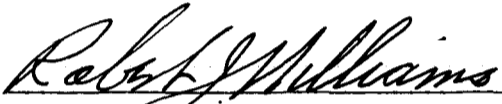
Based on the Inlandboatmen Union's agreement, the stipulations of the parties, the evidence and all of the facts and circumstances of this case, the following award is made:


The grievance is denied.

DATED this 30th day of May, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARY ELLEN KRUG, Chairman

  
ROBERT WILLIAMS, Commissioner

  
JOHN C. LEINEN, Commissioner