

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

JAMES A. WEYTHMAN,)	
)	
Grievant,)	MEC CASE NO. 3-83
)	
v.)	DECISION NO. 5 – MEC
)	
WASHINGTON STATE FERRIES)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
_____)	

BACKGROUND AND DESCRIPTION

The grievant, James A. Weythman, was employed by Washington State Ferries (WSF) on October 19, 1979, and is still so employed. While assigned as an oiler on the MS Hyak, and being informed that MS Hyak was being taken off the Seattle-Bremerton run, grievant requested transfer to MS Spokane, Watch “C” under Chief Engineer Frye. On March 2, 1983, grievant was transferred to MS Spokane, but to Watch “D” under Chief Engineer Johnson.

After working several shifts on Watch “D”, grievant complained to his union (Inlandboatmen’s Union of the Pacific (IBU)), and was subsequently reassigned to Watch “C” as originally requested.

On May 11, 1983, WSF suspended grievant for 80 working hours, alleging “failure to obey orders, continually.” Again, grievant consulted IBU. After exhausting the remedies available under the WSF/IBU contractual grievance procedures, grievant requested IBU to file his grievance with the Public Employment Relations Commission. On or about July 20, 1983, IBU did forward the matter to the Marine Employees’ Commission (MEC); but IBU did not participate in the subsequent hearings.

On May 1, 1984, grievant alleged by letter to MEC that WSF had violated Rule 10.01 Health and Safety, Rule 15.02 Disputes, and Rule 26.03 Working Conditions, of the

WSF/IBU contract; and he alleged violations of the Federal Code of Regulations Chapter 446-32.40-15, 72.20-5 and 92.20-5 (and) IBU resolution A.468 (XII entitled U.S. Naval Oceans Systems Airborne Noise on merchant ships).

WSF objected to MEC hearing grievant's allegations of violations of the safety and health regulations as being outside the July 20, 1983 grievance and the preceding WSF/IBU grievance procedures which had been completed.

MEC assigned Louis O. Stewart, Commissioner, to hear this matter. Hearings were held on July 11 and July 18, 1984. Grievant appeared pro se. Washington State Ferries was represented by Robert M. McIntosh, Assistant Attorney General.

Although Commissioner Stewart had issued the subpoenas and subpoena duces tecum requested by grievant, and although WSF complied with the subpoena duces tecum, it became evident at the outset of the hearing and throughout that grievant needed more documentation than he had requested. WSF requested a question about reimbursement of the cost of reproducing such documentation. In order to proceed with the hearing, Commissioner Stewart guaranteed reimbursement of such cost of WSF, if necessary.

Hearing transcripts were distributed to both parties on August 15, 1984. Post-hearing briefs were filed with MEC on September 7, 1984.

The Marine Employees' Commission, having reviewed the entire record, now enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Grievant was employed as an oiler by Washington State Ferries at the time of his suspension, May 11, 1983.

2. As an oiler, grievant was assigned certain jobs, such as cleaning, masking and painting an engine, other equipment and two engine-room bulkheads, all of which are tasks normally assigned to wipers and oilers.
3. Grievant did take several weeks to do a cleaning, masking and painting job on one engine without completing it, while another oiler completed a similar job on another engine in one week.
4. Grievant did leave the engine room for the major part of one shift without assignment or permission on April 5, 1983.
5. Grievant did procrastinate for weeks before starting to paint two bulkheads and associated equipment and never did complete the job.
6. Both oral and written instructions and expected time of completion were given to grievant.
7. WSF asked for and did receive health and safety inspections by the Washington State Department of Labor and Industries and by the University of Washington Department of Environmental Health. Sustained noise levels were found to be within allowable limits with personal hearing protection. Engine room personnel were provided personal ear plugs. All personnel were specifically prohibited from cleaning or painting from scaffolds or near hazardous equipment while the vessel was underway.
8. Grievant periodically continued to read newspapers, magazines, and auto repair manuals during his watch after being told repeatedly to discontinue that practice.
9. Both oral and written warnings and reprimands were issued to grievant.
10. Rule 6.01 of the WSF/IBU contract provides in part:

6.01 Subject to the terms and conditions of this Agreement, the employer retains the right and duty to manage its business, including the right to adopt regulations governing the appearance, dress, conduct and work procedures of its employees, as are reasonably required to maintain safety, efficiency, quality of service, and the confidence of the traveling public...

11. WSF Policy Circular No. 03-R1 states in part:

... Regardless of past verbal or written warnings or suspensions, immediate suspension by an employee's supervisor, followed by suspension or immediate termination by the General Manager or his designee, may occur as a result of all serious offenses including, but not limited to, offenses such as the following:

Insubordination.

.
.

.

Negligence or incompetence relating to work performance which endangers life or property.

.
.

.

Serious violation of safety or security rules.

.
.

.

If a supervisor has reasonable cause to believe that an employee has committed a serious offense, including but not limited to those described above, the supervisor should immediately place the employee on indefinite suspension. The supervisor is responsible for preparing an Employment Suspension/Termination Advice form...and communicating, as soon as possible, information relating to the offense and suspension to the appropriate management official. The manager will conduct an investigation, and make a recommendation for reinstatement, continued suspension, or termination.

In addition to the above procedures, if the offending employee is a vessel crew member:

1. The incident must be logged by the Master and read to the employee...

2. The employee is to be given an opportunity to write and sign a reply in the log book.
 3. Inform the employee that a copy of the entry may be obtained from the Operations office at Pier 52, Seattle.
 4. Place the employee on immediate indefinite suspension.
 5. The U.S. Coast Guard is to be notified as soon as possible... . The Coast Guard requires notification for any employee infraction which results in a log book entry, regardless of the disciplinary action that may follow.
 6. ...
12. Taking several weeks to complete an assignment of cleaning, masking and painting an engine, when such assignment can reasonably be completed in one week, procrastination of several weeks before starting to paint bulkheads and associated equipment and never completing the job, and reading newspapers, magazines and auto-repair manuals while on watch and after being told to discontinue such extra-curricular reading, does each constitute "negligence or incompetence relating to work performance," but none of these can be construed as an emergency "endangering life or property," after being tolerated for weeks.
 13. No evidence was presented to indicate that grievant actually refused to obey any direct order. At worst, grievant continued to act as permissive supervision had permitted him to act over a sustained period of time. Further, grievant was not warned of the consequences of his periodic or continued reading.
 14. An oiler leaving the engine room for several hours without assignment or permission does constitute a "serious violation of safety or security rules and negligence or incompetence to work performance which endangers life or property." Grievant did so leave the engine room without assignment or permission on April 5, 1983. But the supervisor did not "immediately place the employee on indefinite suspension." Grievant was not actually placed on suspension until May 11, 1983.

15. The supervisor who suspended grievant did immediately notify management of the suspension and the supporting facts of negligence, incompetence and endangerment.
16. Grievant was given opportunity to read the entries in the ship's log concerning his performance and was informed of the required notification of reprimand to the U.S. Coast Guard; and he was given opportunity to enter his response in said ship's log.
17. WSF management did make the decision to suspend grievant for 80 working-hours, effective May 12, 1983, after repeated oral and written warnings had failed to achieve improved performance.
18. Following his suspension, grievant did utilize the grievance procedures specified in Rule 15 – Disputes in the WSF/IBU contract.
19. Following the suspension of grievant, both parties properly utilized the grievance procedures in the WSF/IBU contract.

Based on the foregoing findings of fact, the Marine Employees' Commission adopted the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction in this matter by authority of RCW 47.64.150 and 47.64.280.
2. This matter was properly filed with the approval of IBU as required by WAC 316-65-010.
3. The contractual grievance steps specified in Rule 15.02 of the WSF/IBU contract were completed.

4. Grievant's additional complaints of safety and health code violations were admitted, even though not stated in the original grievance, for whatever relevance they may have had as a defense against WSF charges that grievant refused to obey orders.
5. Sustained noise levels, provision of personal ear plugs, and prohibition of painting and cleaning from scaffolds or near hazardous machinery, were in compliance with the Washington State Industrial Safety and Health Codes, and with Rule 26 of the WSF/IBU contract.
6. Standard tests of clear instructions combined with explicit warnings about the consequences of specific activity, required to prove insubordination, were not met. (MicroPrecision Gear & Machine Corp., 31 LA 575; Safety Trailer, Inc. and Brotherhood of Railroad Trainmen, Lodge 1023, 38 LA 218)
7. Entries in the ship's log regarding grievant's performance, opportunity for grievant to write and sign a reply in the ship's log, and notification of the U.S. Coast Guard, were all in compliance with WSF Policy Circular No. 03-R1, dated June 15, 1981.
8. Cause for the immediate suspension of grievant on May 11, 1984 was flawed. Procrastination and/or dilatory tactics in performing routing cleaning and painting jobs over a period of weeks does not necessitate emergent removal of an employee from a job. Abandoning one's watch in an engine room for several hours without assignment or permission may be grounds for immediate action, but not 36 days later.
9. Conduct of grievant constitutes neglect of duty.
10. WSF management's decision to suspend grievant for 80 working-hours, effective May 12, 1984, instead of termination, as a disciplinary action after repeated oral and written warnings had failed to achieve improved performance, was a proper exercise of managerial judgment, and should be sustained.

11. Grievant was entitled to copies of all records in his personnel file pertaining to this matter in accordance with Rule 15 of the WSF/IBU contract.

Based on the foregoing findings of fact and conclusions of law, the Marine Employees' Commission makes the following decision and order.

DECISION AND ORDER

1. The immediate suspension of James A. Weythman by Washington State Ferries, effective May 11, 1984, is hereby reversed; whatever wage and/or benefit loss was suffered by James A. Weythman for May 11, 1984 shall be paid to him by Washington State Ferries; a notation of this reversal of immediate suspension shall be entered into the ship's log; and any notation in his personnel file that James A. Weythman was removed from the ship on an immediate basis shall be purged from such file.
2. Washington State Ferries shall reimburse James A. Weythman for any out-of-pocket expense he incurred for copies of his records for his prosecution of this case.
3. The 80 working-hour suspension of James A. Weythman, effective May 12, 1983, is hereby sustained.

Dated at Seattle, Washington, this 4th day of December, 1984.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ LOUIS O. STEWART, Commissioner

/s/ DONALD E. KOKJER, Commissioner