

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION  
OF THE PACIFIC,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 30-00

DECISION NO. 289 - MEC

DECISION AND AWARD

Schwerin, Campbell and Barnard, attorneys, by *Robert Lavitt*, appearing for and on behalf of the Inlandboatmen's Union of the Pacific.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

THIS MATTER came regularly before the Marine Employees' Commission on August 11, 2000 when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of 1) Tami Rae Dahl, 2) Donna Fulton, 3) Jack Harrah, 4) Shari Mousset, 5) Sherry Sandford. Ann Terashita was originally named as a grievant in this matter, but her grievance was resolved by the parties prior to the hearing on June 26, 2001. IBU's grievance request alleges that Washington State Ferries (WSF) made improper transfers in relation to seniority dates, in violation of the IBU/WSF Collective Bargaining Agreement (CBA).

IBU has certified that the grievance procedures in the IBU/WSF CBA were utilized and exhausted. IBU has also certified that the Arbitrator's decision shall not change or amend the terms, conditions or application of said collective bargaining agreement; and that the Arbitrator's award shall be final and binding.

The parties' agreement as to the parameters of the dispute to be resolved by said Arbitrator is binding on them and on him. Such agreement is accepted, therefore, as the test for determining the rights, in the material circumstances of the parties here, including the grievants Dahl, Fulton, Harrah, Mousset and Sandford.

A hearing in this matter was conducted on June 26, 2001, pursuant to chapter 47.64.150 and 47.64.280 RCW; chapter 316-02 and 316-65 WAC. Briefs were timely filed by August 17, 2001.

## POSITION OF THE PARTIES

### Position of IBU

Ann Terashita was a longtime employee of WSF, having worked approximately 20 years in the Deck department when she transferred to a permanent open year-round position in the Terminal Department as of May 16, 1999.

Seniority is spelled out in Rule 21 of the CBA, specifically Rules 21.04 and 21.06, as to department and classification seniority dates.

Ann Terashita was displaced from her permanent position at the Bainbridge Terminal when a Terminal Department employee, who had been off work on medical leave, received medical clearance to return to her regular job at the Bainbridge Terminal. When the employee returned to work, there was no permanent terminal position open for Ann Terashita to transfer into, so she had to go to on-call status at the Terminal as of January 9, 2000.

WSF violated the CBA when they assigned Ann Terashita an on-call seniority date, which was her hire date with WSF, approximately 20 years earlier in the Deck Department. With this incorrect seniority date, she worked some hours that should have gone to the grievants at the Terminal who had on-call seniority dates earlier than May 16, 1999.

WSF should have assigned Ms. Terashita an on-call seniority date that was the date she transferred from the Deck Department to the Terminal Department and classified as a Traffic Attendant at the Bainbridge Terminal, which was May 16, 1999.

The grievants should be awarded the hours they would have worked from January 9, 2000 to May 6, 2000, had Ms. Terashita not been dispatched ahead of them because she was given an incorrect seniority date.

### Position of WSF

This is a simple case and no relief is warranted. Ann Terashita, an approximately 20-year employee of WSF, transferred from the Deck Department to the Bainbridge Terminal to a permanent full-time position on May 16, 1999.

The employee who had previously filled the position, had vacated it for medical reasons. She received a medical clearance to return to work and wanted her job back. This resulted in Ann Terashita being displaced from a permanent position because she was a junior employee in a permanent position and there was no other permanent position for her to transfer to at the Terminal. Seniority in the Terminal Department is generally by terminals as opposed to fleet wide. When Ann Terashita lost her permanent position she went to on-call status.

When Ann Terashita went to on-call status there was concern by both WSF and IBU as to what her seniority date would be: Should she go to the bottom of the seniority list or should she be at the top? WSF contends the CBA, Rule 1.16 - On Call Employees, is applicable to her in that she lost her permanent position and went to on-call status and should be assigned a seniority date based upon her hire date with WSF, some 20 years ago.

WSF also contends that CBA, Rule 21 – Seniority and Assignments, like Rule 1.16 also mentions on-call employees, but does not change the computation of seniority in any way. Rule 21 does not modify or overrule Rule 1.16, which is the definition and the basic rule on this subject, of on-call employees.

WSF also contends that Steve Rodgers, WSF Assistant South Regional Manager and Dennis Conklin, Business Agent for the Inlandboatmen’s Union, of which Ann Terashita is a member, agreed that she should be assigned work at the Bainbridge Terminal based on her hire date with WSF.

Some of the grievants did work their 80 hours per pay period, and WSF is under no obligation to call them to work overtime, which would be beyond 80 hours per pay period.

Ann Terashita was exactly where she belonged at the top of the seniority list for on-call employees at the Terminal as agreed to by the parties as clearly set forth in Rule 1 – Definitions and specifically Rule 1.16.

#### ISSUE

1. Was Ann Terashita correctly assigned seniority as an on-call employee at the Bainbridge Island Terminal, based upon her date of hire, as opposed to her transfer and classification dates?
2. If not, what is the appropriate remedy?

## DISCUSSION

Ms. Terashita was hired by WSF in the Deck Department approximately 20 years ago. When a permanent position opened at the Bainbridge Island Terminal, she transferred from the Deck Department to that Terminal Department. On May 16, 1999, she started working as a Traffic Attendant/Ticket Taker. This transfer was pursuant to the CBA, Rule 21.08 Inter Department Transfers.

Ms. Terashita's approximately 20 years' seniority in the Deck Department was frozen and her seniority in the Terminal Department started on May 16, 1999, this was the same date her seniority started in her classification as a Traffic Attendant/Ticket Taker.

From May 16, 1999 to January 9, 2000, Ms. Terashita worked as a permanent Traffic Attendant/Ticket Taker. Her seniority date in the Terminal Department and in her classification remained the same—May 16, 1999.

She lost her permanent position when the previous holder of that position who had been on medical leave was cleared to return to work and replaced Ms. Terashita.

Ms. Terashita had approximately 20 years seniority based upon her hire date by WSF when she started to work in the Deck Department. When she was replaced as a permanent Traffic Attendant/Ticket Taker, she elected to stay at the Bainbridge Island Terminal as a part-time, on-call employee. Her Terminal Department and classification seniority date was May 16, 1999.

Steve Rodgers, WSF Assistant Terminal Manager for the South Region and Dennis Conklin, IBU Business Agent discussed Ms. Terashita's new assignment after she was displaced by the employee who returned from medical leave.

Mr. Conklin was of the belief that the first part of Rule 21.04, Establishing Seniority, applied. It reads: "An employee's hire date shall become the employee's seniority date on the date the employee is assigned to year-round employment in a designated department." Mr. Conklin claimed Ms. Terashita's seniority should be as of May 16, 1999, pursuant to the CBA rules.

Mr. Rodgers was of the opinion that Ms. Terashita date should be her hire date when she was first employed by WSF and assigned to year-round employment in the Deck Department, which was her designated department, 20 years earlier.

Mr. Conklin and Mr. Rodgers agreed that this matter should be resolved by the expedited arbitration in MEC Case No. 2-00, which resulted in MEC Decision No. 233 on May 11, 2000. Ms. Terashita left her job at the Bainbridge Island Terminal as a part-time on-call employee on May 6, 2000. MEC Decision No. 233 had no direct effect on her specific job, although it stressed that terminal seniority should be based upon departmental classification.

Mr. Rodgers believed that since Ms. Terashita was going to a part-time, on-call position and remain at the Bainbridge Terminal, that she was entitled to seniority based upon her hire date with WSF some 20 years earlier when she joined the Deck Department based upon the general language defining “on-call employee” contained in Rule 1.16. Mr. Rodgers directed that Ms. Terashita be assigned the seniority date of when she joined the employment of WSF some 20 years before in her part-time on-call employment at the Terminal.

WSF and IBU representatives were in discussions in December concerning the effect of the passage of I-695 on the WSF employees in the fleet and terminals as to the elimination of positions, bumping, transferring and layoffs.

Dennis Conklin, IBU, wrote to Michael Manning, WSF Labor Relations Manager on January 4, 2000 based upon their prior discussions concerning employees’ job positions and seniorities, and the possibilities of an expedited arbitration to answer some of the questions. A Letter of Understanding (LOU) was included with Mr. Conklin’s letter.

Mr. Manning stated there was no agreement reached as noted in the letter; that the letter was not accurate. There was no agreement as indicated in the letter to enter into a Letter of Understanding. The letter was never accepted or agreed-to by Mr. Manning as he disputed the accuracy and contents of the letter.

Mr. Conklin indicated he thought Mr. Manning had agreed to have the on-call people remain in the on-call position and not move them until the expedited hearing was completed, which would put a freeze on any movement between departments.

Mr. Manning testified this would be a change in the CBA and he was not interested in any changes in the CBA.

Mr. Conklin also testified that the January 4, 2000 letter was not accurate. He was testifying about employees transferring from Deck to Terminal and Terminal to Deck. He used the term “date of hire” when he meant “date of transfer.”

Both parties testified that the letter of January 4, 2000 was inaccurate, so no weight can be given to its value in these proceedings.

#### FINDINGS OF FACT

1. Ms. Terashita's 20-year seniority in the Deck Department was frozen at the time she vacated the Deck Department and transferred into the Terminal Department. She started building Terminal and job classification seniority as of May 16, 1999.

2. In early January 2000, Ms. Terashita was displaced by the return of an employee who had been on sick leave. Ms. Terashita elected to stay at the terminal where she was working and go to part-time on-call status.

3. Ms. Terashita did not activate her frozen 20-year Deck Department seniority and return to that Department.

4. IBU insisted that Ms. Terashita be given a seniority date based upon her departmental classification date, May 16, 1999; this would place her at the bottom or near the bottom of the part-time, on-call list at the Terminal.

5. WSF assigned Ms. Terashita a seniority date based upon her hire date some 20 years earlier in the Deck Department. The seniority date placed her at the top of the part-time, on-call list at the Bainbridge Terminal.

6. Ms. Terashita worked as a part-time, on-call at the Bainbridge Terminal from January 9, 2000 through May 6, 2000.

7. Rule 21.08 of the contract applies to Ms. Terashita's inter-departmental transfer from the Deck Department to the Terminal Department on May 16, 1999:

21.08 Inter-Department Transfer – An employee who holds a year-around assignment may request a transfer from their Department to another Department provided that the employee meets the minimum qualifications and is qualified to perform the job duties for which they are requesting a transfer to and provided further that no year-round employee in that Department is laid off. When transferring from one Department to another Department, the employee's seniority will be frozen in the vacated Department. Mileage and travel pay will not be paid to any employee who accepts an inter-department transfer.

8. Seniority and assignments is spelled out in Rule 21, with the general theme that "seniority by classification shall prevail."

## RULE 21 – SENIORITY AND ASSIGNMENTS

21.01 The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. In the application of seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job requirements, seniority by classification shall prevail.

21.02 In reducing or increasing personnel in the respective departments, seniority shall govern. When layoffs or demotions become necessary, the last employee hired in a classification shall be first laid off, or demoted to a lesser classification for job retention. When employees are called back to service, the last laid off or demoted in a classification shall be the first restored to work in that classification.

21.03 Elimination of Year Around Assignments. When a year around assignment is eliminated the affected employee shall have the right to exercise their seniority by classification in selecting a new assignment of their choice. Any displaced employee will also have the right to exercise their seniority by classification in selecting a new assignment of their choice.

21.04 Establishing Seniority:

1. An employee's hire date shall become the employee's seniority date on the date the employee is assigned to year-round employment in a designated department, or on the date on which the employee completes 1040 straight-time hours of work with the Employer, whichever occurs first. Provided that, for job bidding purposes, ABs shall use the date of their initial AB (eighteen (18) month) Endorsement on their U.S. Merchant Mariner's Document, or their date of hire with the employer, whichever is later. The provisions of this paragraph shall not operate to change any seniority date established prior to April 1, 1985.
2. It is understood and agreed that the "date of hire" will be used, prior to an employee attaining seniority as provided in 21.04-1, for all non-year round assignments. Further, it is agreed that the employee's date of hire may be adjusted from time-to-time resulting from the employee's non-availability to work. Provided the Employer substantiates the employees non-availability by certified U.S. Mail, and the employee does not respond or state he is available for assignments within fifteen (15) calendar days.
3. Employees filling year around positions on a temporary basis will not accrue seniority in that temporary assignment, but will continue to accrue seniority in their year around assignment and position.
4. Department Seniority: Seniority shall be established by classification(s) within the following departments. For seniority purposes, classification(s) of Terminal Department personnel shall fall

into three (3) categories, Deck Department into two (2) categories, and Informational Department into two (2) categories.

- Deck Department:
1. Able Seaman
  2. OS, OS/Watchman
- Terminal Department:
1. Terminal Agent
  2. Auto Ticket Seller, Passenger Ticket Seller
  3. Passenger Ticket Taker, Auto Ticket Taker, Dock Watchman, Terminal Attendant
- Information Department:
1. Informational Supervisor
  2. Informational Agent

Any employee assigned to the Shoregang shall retain their seniority in the classification and department they held prior to their shoregang assignment. 21.05 Seniority Roster. On February 1, of each calendar year, the Employer shall furnish the Union with seniority rosters for each department showing the names of employees assigned to year around jobs, by department, classification, vessel watch or location. The Employer shall also post these rosters in places accessible to employees of that department. These rosters will be subject to correction at any time by either the Employer, Employee or Union Representative, who shall substantiate the employees correct seniority date, provided that, if said connection is not brought to the attention of the Employer, in writing within sixty (60) calendar days of the publication of the incorrect date, then the Employer will not be required to make any retroactive wage or staffing adjustments resulting from any correction to an employee's seniority date.

21.06 On-call Employee Lists. The Employer shall prepare and maintain supplemental lists in order of dates of hire by department and classification of on-call employees. These lists shall be furnished within ten (10) days when requested by the Union.

WSF based its decision to assign Ms. Terashita as a part-time, on-call pursuant to the Preamble, Rule 1 – Definitions and Rule 1.16 - On Call Employee sections of the CBA.

#### PREAMBLE

The Rules contained herein constitute an Agreement between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington, operating Washington State Ferries, hereinafter referred to as the "Employer", and the INLANDBOATMEN'S UNION OF THE PACIFIC, MARINE DIVISION OF THE INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, hereinafter referred to as the "Union", governing wages, hours and other conditions of employment as employees as classified.



All of the following Rules shall apply to the entire Agreement uniformly. Should any Rules in the subsequent Appendices, which by this reference are incorporated herein, modify these rules, such subsequent appendices shall take precedent and apply only to those employees and/or conditions covered by the Appendix.

#### RULE 1 – DEFINITIONS

SPECIFIC DEFINITION: Unless the context of a particular section of this Agreement clearly dictates otherwise, the following terms shall have the following meanings:

....

1.16 ON CALL EMPLOYEE. The term “on call employee” shall be an employee who may or may not be working on a year around basis, and who is not guaranteed forty (40) hours of straight time pay per week. The employee will be assigned work based on their date of hire and availability.

#### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over the subject matter and the parties involved in this case, pursuant to chapter 47.64 RCW generally, and specifically RCW 47.64.280. Orders of the Marine Employees' Commission are final and binding upon ferry employees and their representatives affected thereby and upon the Department of Transportation. RCW 47.64.280(3).

2. In assigning seniority based upon her initial employment date, WSF used as the basis, Rule 1.16, On-Call Employee. “The term ‘on-call employee’ shall be an employee who may or may not be working on a year around basis, and who is not guaranteed forty (40) hours of straight time pay per week. The employee will be assigned work based on their date of hire and availability.

3. The date of hire is a general term based upon the CBA as signed by WSF and IBU.

A. Pursuant to Rule 21.04-2, a person’s first day employed by WSF would be used as “date of hire” prior to attaining seniority as provided in Rule 21.04-1. for all non-year around assignments; e.g, *A is employed on June 1, 2000, would use June 1, 2000 as a “date of hire” and seniority date until completing one of the requirements in Rule 21.04-1. June 1, 2000, becomes A’s hire date for seniority.*

B. Pursuant to Rule 21.04-1, after being employed by WSF, “An employee’s hire date shall become the employee’s seniority date on the date the employee is assigned to year-round employment in a designated department,” e.g.: *B is employed June 1, 2000 and on May 16, 2001, is assigned to a year-round employment at Bainbridge Island Terminal. May 16, 2001, becomes B’s hire date for seniority.*

C. Pursuant to Rule 21.04-1, after being employed by WSF “An employee’s hire date shall become the employee’s seniority date . . . on the date on which the employee completes 1040 straight time hours of work with the Employer;” e.g., *C is employed on June 1, 2000 and completes 1040 straight-time hours on April 5, 2001. April 5, 2001 becomes C’s hire date for seniority.*

4. The key phrase in Rule 21 – Seniority and Assignments is “Seniority by classification shall prevail.”

5. Rule 1.16 is a general, broad term that requires Rule 21 to indicate the specificity, application and interpretation of Rule 1.16.

6. A well known Arbitrator, Jonathan Dworkin, held in 85 LA 6, 9 (1986) as follows: “A broadly observed principle of contract interpretation acknowledged in both courts of law and arbitration holds that specific language prevails over general language.” This view has been held by arbitrators for over 50 years: “It is a common canon of the construction of contracts that specific language governs general language.” 12 LA 462, 469 (Wyckoff 1949). “It is a universal principle of contract construction that general provisions yield to specific provisions.” 12 LA 530, 531(McCoy 1949).

7. MEC Case No. 2-00, Decision No. 233-MEC, concerning the Terminal Department, stressed that “seniority by classification” as noted in Rules 21.01 through 21.04 was controlling.

8. WSF was in error when it used Ms. Terashita’s initial employment date in the Deck Department, some 20 years earlier, to indicate her seniority in her part-time, on-call position at the Bainbridge Terminal.

9. WSF should have used Ms. Terashita’s departmental classification date of May 16, 1999, for her seniority in her part-time, on-call position at the Bainbridge Terminal.

AWARD

1. The grievance is sustained. WSF is directed to reimburse affected employees proven wage losses.

2. The grievants as noted and stipulated by counsel for the parties are: Shari Mousset, Donna Fulton, Tami Rae Dahl, Sherry Sanford and Jack Harrah.

3. WSF and IBU shall designate their representatives to review the work schedules at the Bainbridge Terminal from the time Ms. Terashita went to work as a part-time, on-call until she left that position. Based upon the hearing, it is believed this period is from January 9, 2000 through May 6, 2000. However, when the parties' representatives review the records, these dates might vary.

4. The designated representatives are to calculate the grievants' losses from wages they would have earned had Ms. Terashita's seniority been correctly stated as May 16, 1999.

5. The Arbitrator will retain jurisdiction over this case for a period of 60 days from the date of this Award. If the parties are unable to determine or agree based upon the records, as to any loss of work and wages, they will advise MEC in writing within 30 days from the date of this Award. At that time, a hearing will be scheduled and the Arbitrator will then rule on any disputed claims at issue, based upon the records.

DATED this 20<sup>th</sup> day of September 2001.

MARINE EMPLOYEES' COMMISSION

\_\_\_\_\_/s/  
JOHN SULLIVAN, Arbitrator

Approved By:

\_\_\_\_\_/s/  
JOHN NELSON, Chairman

\_\_\_\_\_/s/  
JOHN BYRNE, Commissioner